

11-2-2009

Gibson v. Ada County Sheriff's Office Clerk's Record v. 5 Dckt. 34368

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Gibson v. Ada County Sheriff's Office Clerk's Record v. 5 Dckt. 34368" (2009). *Idaho Supreme Court Records & Briefs*. 1627.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1627

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAW CLERK

Vol. 5 of 9

COPY

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

STACY A. GIBSON,

Claimant-Appellant,

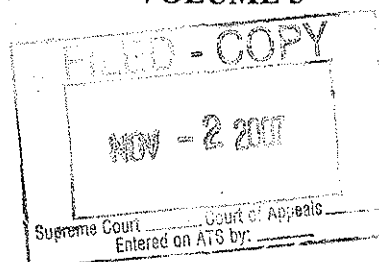
v.

ADA COUNTY SHERIFF'S OFFICE, Employer,
and IDAHO STATE INSURANCE FUND, Surety,

Defendants-Respondents.

SUPREME COURT NO. 34368

**AGENCY'S RECORD
VOLUME 5**



**BEFORE THE INDUSTRIAL COMMISSION
STATE OF IDAHO**

CLAIMANT: STACY A. GIBSON

BY: Vernon K. Smith
1900 West Main Street
Boise, ID 83702

**DEFENDANTS: ADA COUNTY SHERIFF'S OFFICE, Employer and
IDAHO STATE INSURANCE FUND, Surety**

BY: Jon M. Bauman
P.O. Box 1539
Boise, ID 83701

34368

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant-Appellant,	)	SUPREME COURT NO. 34368
v.)	
)	
ADA COUNTY SHERIFF'S OFFICE, Employer,	)	AGENCY'S RECORD
and IDAHO STATE INSURANCE FUND, Surety,	)	VOLUME 5
)	
Defendants-Respondents.)	
)	

**BEFORE THE INDUSTRIAL COMMISSION
STATE OF IDAHO**

CLAIMANT: STACY A. GIBSON

BY: Vernon K. Smith
1900 West Main Street
Boise, ID 83702

**DEFENDANTS: ADA COUNTY SHERIFF'S OFFICE, Employer and
IDAHO STATE INSURANCE FUND, Surety**

BY: Jon M. Bauman
P.O. Box 1539
Boise, ID 83701

COPY

TABLE OF CONTENTS

Exhibit List and Amended List of Exhibits	V-1... (i)
Workers' Compensation Complaint....filed 7/16/2001	V-1... 1
Amended Workers' Compensation Complaint....filed 7/31/2001	V-1... 11
Certificate of Service Employer letter to Claimant....filed 8/7/2001	V-1... 21
Answer to Workers' Compensation Complaint....filed 8/10/2001	V-1... 34
Claimant's Motion to Vacate & Reset Hearing....filed 11/30/2001	V-1... 37
Claimant's Stipulation to Vacate & Reset Date for Taking Deposition of Claimant....filed 11/30/2001	V-1... 40
Claimant's Amended Stipulation to Vacate & Reset Hearing....filed 12/4/2001	V-1... 43
Claimant's Amended Stipulation Vacate & Reset Date for Taking Deposition of Claimant....filed 12/4/2001	V-1... 45
ORDER:...Order Vacating Hearing....filed 12/12/2001	V-1... 47
Certificate of Receipt of Defendants re: Complaint & Ada County letter....filed 1/14/2002	V-1... 49
Defendants' Motion Compel Discovery & affidavit & exhibits....filed 1/28/2002	V-1... 53
ORDER:...Order Compelling Discovery....filed 2/12/2002	V-1... 60
Defendants' Motion to Compel & Motion Stay Proceedings & affidavit....filed 10/28/2002	V-1... 62
Claimant's Motion Vacate & Reset Hearing....filed 11/1/2002	V-1... 70
Defendants' Response to Motion to Vacate & Reset Hearing....filed 11/5/2002	V-1... 74
ORDER:...Order Vacating & Resetting Hearing....filed 11/15/2002	V-1... 78
ORDER:...Order Compelling Discovery....filed 11/15/2002	V-1... 80
Stipulation to Vacate Hearing....filed 3/17/2003	V-1... 82
ORDER:...Order Vacating Hearing....filed 3/18/2003	V-1... 84
Defendants' Motion to Compel Attendance at Independent Psychological Evaluation & memorandum & exhibits....filed 6/12/2003	V-1... 86

ORDER:..Notice of Intent to Rule & Order....filed 6/18/2003	V-1...121
Claimant's Response to Notice Intent to Rule & Order....filed 6/19/2003.....	V-1...123
ORDER:..Order....filed 6/19/2003	V-1...150
Defendants' Motion to Dismiss Complaint or Limit Issues to be Tried at Hearing & memorandum & affidavit & exhibits....filed 3/30/2004	V-2...152
Claimant's Request Additional Time to Submit Claimant's Response to Defendants' Motion to Dismiss Complaint or Limit Issues to be Tried at Hearing & affidavit....filed 4/12/2004 ..	V-3...387
Defendants' Non-Objection Request Additional Time to Submit Claimant's Response to Defendants' Motion to Dismiss Complaint or Limit Issues to be Tried at Hearing....filed 4/13/2004.....	V-3...392
ORDER:..Order Granting Additional Time....filed 4/14/2004	V-3...394
Claimant's Response to Defendants' Motion to Dismiss Complaint or Limit Issues to be Tried at Hearing & exhibits....filed 4/27/2004	V-3...396
Defendants' Motion to Compel Discovery Responses & affidavit....filed 4/27/2004.....	V-4...643
ORDER:..Order....filed 4/29/2004	V-4...648
ORDER:..Order Denying Motion to Compel....filed 5/5/2004.....	V-4...650
Defendants' Motion In Limine & attachment....filed 5/5/2004.....	V-4...651
Claimant's Response to Defendants' Motion In Limine....filed 5/12/2004	V-4...668
ORDER:..Order Vacating Hearing....filed 5/13/2004.....	V-4...681
Claimant's Request for Hearing....filed 10/27/2004.....	V-4...683
Defendants' Response to Request for Hearing....filed 11/2/2004	V-4...688
ORDER:..Order & Notice of Hearing....filed 11/17/2004	V-4...692
Claimant's faxed letter to Defendants date 3/11/2005....filed 3/14/2005	V-4...694
Claimant's faxed to Referee Donohue dated 3/14/2005....filed 3/14/2005	V-4...697
Notice of Telephone Conference....filed 3/17/2005	V-4...698
Claimant's letter & exhibits to Referee Donohue dated 3/18/2005....filed 3/18/2005	V-4...699
Defendants' Objection & Motion to Strike Letter of Vernon K. Smith dated 3/18/2005....filed 3/21/2005	V-5...853

Claimant's faxed letter dated 3/24/2005 to Vernon K. Smith from F. LaMarr Heyrend, M.D. ....filed 3/24/2005	V-5...858
ORDER:..Order on March 24, 2005, Telephone Conference....filed 3/25/2005	V-5...860
Defendants' Request for Telephone Conference....filed 4/11/2005	V-5...862
ORDER:..Order on Claimant's Attendance at Evaluation....filed 4/12/2005	V-5...865
Defendants' Motion to Compel Discovery Responses....filed 4/20/2005	V-5...867
Claimant's Response to Defendants' Motion to Compel Discovery Responses....filed 4/26/2005	V-5...872
Defendants' Reply in Support of Motion to Compel Discovery Responses....filed 4/27/2005...	V-5...877
ORDER:..Order Compelling Discovery....filed 4/27/2005	V-5...883
Claimant's Objection to Defendants' Efforts to Schedule Claimant to Further Evaluations by a Medical Advocate & exhibits....filed 5/9/2005	V-5...884
Defendants' Response to Claimant's Objection to Defendants' Efforts to Schedule Claimant to Further Evaluations by a [sic] Medical Advocate & exhibits....filed 5/9/2005	V-5...920
ORDER:..Order on Claimant's Attendance at Second Medical Evaluation....filed 5/10/2005 ...	V-5...944
Claimant's Motion to Reconsider Idaho Industrial Commission's Interlocutory Order Entered May 10, 2005 & affidavit & exhibits & memorandum....filed 5/11/2005	V-5...946
Defendants' Response to Claimant's Motion for Reconsideration....filed 5/11/2005	V-5...974
ORDER:..Order on Claimant's Motion to Reconsider....filed 5/11/2005	V-5...977
Defendants' Motion to Compel Attendance at Medical Evaluation & affidavit & attachments....filed 5/11/2005	V-5...979
Defendants' Motion to Vacate & Reschedule Hearing & affidavit....filed 5/12/2005	V-5...992
Claimant's Response to Defendants' Motion to Compel Attendance at Medical Evaluation & Motion to Enforce Subpoena Duces Tecum & attachments....filed 5/12/2005	V-5...998
ORDER:..Another Order on Claimant's Attendance at Second Evaluation....filed 5/12/2005 .	V-5...1067
Defendants' Request for Telephone Conference....filed 5/13/2005	V-5...1069
Claimant's Motion for Permission to Appeal from Idaho Industrial Commission's Interlocutory Order Entered May 10, 2005 & May 12, 2005....filed 5/12/2005	V-5...1071

Claimant's Response to Defendants' Motion to Vacate & Reschedule Hearing & available dates....filed 5/13/2005.....	V-5...1075
ORDER:...Order Vacating Hearing & Notice of Telephone Conference....filed 5/13/2005	V-5...1082
Defendant s' Objection to Claimant's Motion for Permission to Appeal from Idaho Industrial Commission's Interlocutory Order Entered May 10, 2005 & May 12, 2005, & Motion for Expedited Hearing....filed 5/19/2005	V-5...1083
Defendants' Response to Claimant's Motion for Permission to Appeal from Idaho Industrial Commission's Interlocutory Order Entered May 10, 2005 & May 12, 2005....filed 5/25/2005.....	V-5...1088
Defendants' faxed letter to Referee Donohue dated 5/26/2005 & attachments....filed 5/26/2005	V-5...1104
ORDER:...Orders on Motions....filed 6/3/2005	V-6...1109
Notice of Hearing & Discovery Order....filed 6/3/2005	V-6...1111
Defendants' Motion for Order to Attend Independent Medical Evaluation & for Production of Documents & affidavit & exhibits & addendum....filed 6/6/2005	V-6...1113
ORDER:...Order on Attendance, Order on Production, & Order on Request for Telephone Conference....filed 6/20/2005	V-6...1122
Claimant's Motion to Reconsider Referee's Order of 6/3/2005 & 6/20/2005 & exhibits....filed 6/23/2005	V-6...1124
Defendants' Response Claimant's Motion to Reconsider Referee's Order of 6/3/2005 & 6/20/2005 & exhibits....filed 6/24/2005	V-6...1134
Defendants' Motion to Compel Attendance at Taking of Electroencephalogram (EEG)....filed 7/8/2005.....	V-6...1140
Defendants' Request for Telephone Conference....filed 7/8/2005	V-6...1145
Defendants' Motion to Compel Attendance at Taking of Electroencephalogram (EEG) & exhibits....filed 7/29/2005	V-6...1147
Defendants' Motion to Extend Discovery Deadline & for Pre-Hearing Telephone Conference & exhibits....filed 8/2/2005	V-6...1155
Claimant's Objection to Defendants' Motion to Compel Attendance of Claimant at EEG....filed 8/5/2005	V-6...1163
Defendants' Reply Brief in Support of Motion to Compel Attendance of Claimant at Electroencephalogram (EEG)....filed 8/5/2005.....	V-6...1168

Defendants' Motion to Compel Discovery Responses & affidavit & exhibits....filed 8/17/2005	V-6...1172
Defendants' Motion to Shorten Time....filed 8/17/2005	V-6...1182
Defendants' Motion to Shorten Time....filed 8/18/2005	V-6...1184
ORDER:...Order Compelling Discovery....filed 8/18/2005	V-6...1187
ORDER:...Order Compelling Attendance....filed 8/18/2005	V-6...1188
Defendants' Another Motion to Compel Attendance of Claimant at Electroencephalogram (EEG)....filed 8/18/2005	V-6...1189
ORDER:...Addendum to Order Compelling Claimant's Attendance....filed 8/19/2005	V-6...1192
Claimant's Motion to Compel Discovery Responses & affidavit & exhibits....filed 8/22/2005	V-6...1193
ORDER:...Order on Motion to Extend Discovery Deadline....filed 8/25/2005	V-6...1224
ORDER:...Order Compelling Discovery....filed 8/25/2005	V-6...1225
ORDER:...Order Denying Motion to Compel....filed 8/29/2005	V-6...1226
Claimant's Further Motion to Compel Discovery Response; Motion to Vacate & Motion to Reset the Scheduled Hearing....filed 8/31/2005	V-6...1227
Defendants' Motion to Quash Subpoena of Dr. Cynthia Brownsmith....filed 9/1/2005	V-6...1257
ORDER:...Order on Motion to Compel & Motion to Vacate Hearing....filed 9/1/2005	V-6...1260
ORDER:...Order on Motion to Quash Subpoena....filed 9/1/2005	V-6...1261
Defendants' Rule 10 Disclosure of Witness & Exhibits....filed 9/2/2005	V-6...1262
Claimant's Rule 10 Disclosure of Witnessed & Exhibits....filed 9/2/2005	V-6...1269
Defendants' Second Motion to Quash Subpoena of Dr. Cynthia Brownsmith....filed 9/6/2005	V-6...1282
ORDER:...Order on Second Motion to Quash Subpoena....filed 9/6/2005	V-6...1288
Defendants' Motion In Limine & exhibits....filed 9/6/2005	V-7...1289
ORDER:...Amended Order on Second Motion to Quash Subpoena....filed 9/7/2005	V-7...1378
Defendants' Motion to Require Supplementation of Discovery Responses & affidavit & exhibits....filed 9/8/2005	V-7...1379

Claimant's Motion to Vacate & Reset Hearing....filed 9/8/2005	V-7...1408
Defendants' Response to Motion to Vacate & Reset Hearing....filed 9/9/2005	V-7...1411
Claimant's Objection to Defendants' Response to Motion to Vacate & Reset Hearing & exhibits....filed 9/9/2005	V-7...1414
Defendants' Motion to Release Drs. Brownsmith & Wilson from Subpoenas....filed 9/9/2005	V-7...1422
ORDER:..Commission's letter Re: Motions are DENIED....filed 9/9/2005	V-7...1425
Claimant's Pre-Hearing Memorandum....filed 9/12/2005	V-7...1426
ORDER:..Order Establishing Briefing Scheduled....filed 9/16/2005	V-7...1439
Claimant's Motion to Vacate Post-Hearing Depositions of Dr. Richard W. Wilson & Dr. Cynthia Brownsmith for Failure to Submit Final Written Reports, as Post-Hearing Depositions used to Produce New Evidence & Testimony would be Contrary to Rule 10 E(4), J.R.P. & memorandum & exhibits....filed 9/23/2005.....	V-7...1441
Defendants' Response to Motion Vacate Post-Hearing Depositions of Dr. Richard W. Wilson & Dr. Cynthia Brownsmith for Failure to Submit Final Written Reports, as Post-Hearing Depositions used to Produce New Evidence & Testimony would be Contrary to Rule 10 E(4), J.R.P.....filed 9/28/2005.....	V-7...1453
ORDER:..Order on Motions to Vacate Depositions....filed 9/30/2005.....	V-7...1460
Claimant's Motion to Reestablish Briefing Schedule & exhibits....filed 10/14/2005	V-7...1462
Defendants' Response to Claimant's Motion to Reestablish Briefing Schedule....filed 10/14/2005.....	V-7...1466
Claimant's Affidavit of F. LaMarr Heyrend, M.D. Establishing Foundation & Basis for Evidence Presented at Post-Hearing Deposition Held on 11/17/2005 filed 11/17/2005	V-7...1468
Defendants' Motion to Strike Affidavit of F. LaMarr Heyrend, M.D. Establishing Foundation & Basis for Evidence Presented at Post-Hearing Deposition Held on 11/17/2005 & Augmented Objection to Exhibit 2 to Heyrend Deposition of 11/17/2005....filed 11/22/2005	V-7...1475
Claimant's Motion to Extend Time to Respond to Defendant's Motion to Strike Affidavit of F. LaMarr Heyrend, M.D. Establishing Foundation & Basis for Evidence Presented at Post-Hearing Deposition Held on 11/17/2005 & Augmented Objection to Exhibit 2 to Heyrend Deposition of 11/17/2005 & exhibits & affidavit....filed 12/8/2005.....	V-7...1480
Defendants' Response to Motion to Extend Time....filed 12/8/2005	V-7...1487

Claimant's Response to Defendants' Motion to Strike Affidavit of
F. LaMarr Heyrend, M.D. Establishing Foundation & Basis for Evidence
Presented at his Post-Hearing Deposition Held on 11/17/2005 & Response to the
Augmented Objection of Defendants to Exhibit 2 Attached to
Heyrend Deposition of 11/17/2005....filed 1/3/2006 V-7...1489

Defendants' Objection to Notice of Continuance of Post-Hearing Deposition of
Dr. F. LaMarr Heyrend, M.D., Duces Tecum & Reply in Support of Motion to Strike
Affidavit of F. LaMarr Heyrend, M.D.filed 1/5/2006 V-7...1509

Claimant's Response to Defendants' Objection to the Continuance of Post-Hearing
...Deposition of Dr. F. LaMarr Heyrend, M.D., Duces Tecum & Further Reply to
Motion to Strike Affidavit of F. LaMarr Heyrend, M.D., & exhibit....filed 1/11/2006..... V-7...1515

Defendants' Reply to Claimant's Response to Defendants' Objection to the
Continuance of the Post-Hearing Deposition of Dr. F. LaMarr Heyrend, M.D.,
Duces Tecum & Further Reply to Motion to Strike Affidavit of
F. LaMarr Heyrend, M.D.filed 1/17/2006..... V-7...1526

ORDER:..Order on Motions....filed 1/27/2006..... V-7...1534

Defendants' Motion to Clarify Status of Exhibits & affidavit & attachment....filed 2/2/2006 . V-8...1537

Claimant Motion to Admit into Evidence Medical Treatises, Studies & Publications
Complied & Identified by Dr. F. LaMarr Heyrend, M.D. as Exhibit 2 during his
Post-Hearing Deposition (Duces Tecum) on 11/17/2005 filed 4/21/2006 V-8...1549

Claimant's Memorandum in Support of Claimant Motion to Admit into Evidence
Medical Treatises, Studies & Publications Complied & Identified by
Dr. F. LaMarr Heyrend, M.D. as Exhibit 2 during his Post-Hearing Deposition
(Duces Tecum) on 11/17/2005 & exhibit....filed 5/8/2006 V-8...1552

Defendants' Request for Telephone Conference....filed 5/8/2006 V-8...1569

Notice of Telephone Conference....filed 5/11/2006..... V-8...1571

ORDER:..Order on Motions & Briefing Schedule....filed 5/19/2006..... V-8...1572

Defendants' Motion for Amended Briefing Schedule....filed 7/6/2006 V-8...1574

ORDER:..Order Establishing Briefing Schedule....filed 8/4/2006 V-8...1577

Claimant's Motion for Leave to File 37 Page Brief....filed 10/6/2006..... V-8...1579

ORDER:..Order & Amended Order Establishing Briefing Schedule....filed 10/23/2006 V-8...1582

Claimant's Motion to Extend Time to file
Claimant's Reply Brief & affidavit....filed 11/17/2006..... V-8...1584

Defendants Response to Motion to Extend Time to File Claimant's Reply Brief....filed 11/20/2006	V-8...1590
ORDER:...Order & Finals Order Establishing Briefing Schedule....filed 11/22/2006	V-8...1592
Claimant's Motion to Strike Deposition Transcript of Cynthia Brownsmith, Ph.D. taken 7/14/2006 & Motion to Strike Reference to Deposition Testimony in Defendants' Post-Hearing Brief....filed 12/8/2006.....	V-8...1594
Defendants' Response to Motion to Strike Deposition Transcript of Cynthia Brownsmith, Ph.D. taken 7/14/2006 & Motion to Strike Reference to Deposition Testimony in Defendants' Post-Hearing Brief & affidavit & exhibits filed 12/13/2006	V-8...1597
Findings of Fact, Conclusions of Law, & Recommendation....filed 3/16/2007	V-8...1629
ORDER:...on Findings, Conclusions, & Recommendation....filed 3/16/2007	V-8...1654
Claimant's Motion to Allow Claimant to File Memorandum in Excess of Thirty (30) Pages....filed 4/5/2007	V-8...1656
Claimant's Preliminary Memorandum in Support of Motion to Reconsider Findings of Fact, Conclusions of Law, & Recommendation Entered 3/2/2007; Motion to Reconsider Commission's Final Order Entered 3/16/2007; & Request for Hearing & exhibits & affidavit....filed 4/5/2007	V-8...1661
ORDER:...Order Disallowing Brief in Excess of 30 Pages....filed 4/11/2007.....	V-8...1746
Defendants' Response to Motion to Reconsider....filed 4/19/2007	V-8...1748
ORDER:...Order Denying Reconsideration....filed 5/21/2007	V-8...1768
Notice of Appeal dated 7/2/2007	V-8...1770
Certificate of Appeal dated 7/2/2007	V-8...1780
Amended Notice of Appeal dated 8/3/2007.....	V-8...1782
Certificate of Service of Amended Notice of Appeal date 8/7/07	V-8...1792
Second Amended Notice of Appeal dated 8/29/2007	V-8...1793
Certificate of Service of Second Amended Notice of Appeal date 8/30/07	V-8...1803
Certification of Record dated 10/1/2007.....	V-8...1804
Notice of Completion dated 10/1/07	V-8...1805

INDEX

Amended Workers' Compensation Complaint....filed 7/31/2001 V-1...11

Amended Notice of Appeal dated 8/3/2007..... V-8...1782

Answer to Workers' Compensation Complaint....filed 8/10/2001 V-1...34

Certificate of Service Employer letter to Claimant....filed 8/7/2001 V-1...21

Certificate of Receipt of Defendants re: Complaint & Ada County letter....filed 1/14/2002 V-1...49

Certificate of Appeal dated 7/2/2007 V-8...1780

Certificate of Service of Amended Notice of Appeal date 8/7/07 V-8...1792

Certificate of Service of Second Amended Notice of Appeal date 8/30/07 V-8...1803

Certification of Record dated 10/1/2007..... V-8...1804

Claimant's Motion to Vacate & Reset Hearing....filed 11/30/2001 V-1...37

Claimant's Stipulation to Vacate & Reset Date for Taking Deposition
of Claimant....filed 11/30/2001 V-1...40

Claimant's Amended Stipulation to Vacate & Reset Hearing....filed 12/4/2001 V-1...43

Claimant's Amended Stipulation Vacate & Reset Date for Taking Deposition
of Claimant....filed 12/4/2001 V-1...45

Claimant's Motion Vacate & Reset Hearing....filed 11/1/2002 V-1...70

Claimant's Response to Notice Intent to Rule & Order....filed 6/19/2003..... V-1...123

Claimant's Request Additional Time to Submit Claimant's Response to Defendants' Motion
to Dismiss Complaint or Limit Issues to be Tried at Hearing & affidavit....filed 4/12/2004 .. V-3...387

Claimant's Response to Defendants' Motion to Dismiss Complaint or
Limit Issues to be Tried at Hearing & exhibits....filed 4/27/2004 V-3...396

Claimant's Response to Defendants' Motion In Limine....filed 5/12/2004 V-4...668

Claimant's Request for Hearing....filed 10/27/2004..... V-4...683

Claimant's faxed letter to Defendants date 3/11/2005....filed 3/14/2005..... V-4...694

Claimant's faxed to Referee Donohue dated 3/14/2005....filed 3/14/2005 V-4...697

Claimant's letter & exhibits to Referee Donohue dated 3/18/2005....filed 3/18/2005	V-4...699
Claimant's faxed letter dated 3/24/2005 to Vernon K. Smith from F. LaMarr Heyrend, M.D. ....filed 3/24/2005	V-5...858
Claimant's Response to Defendants' Motion to Compel Discovery Responses....filed 4/26/2005	V-5...872
Claimant's Objection to Defendants' Efforts to Schedule Claimant to Further Evaluations by a Medical Advocate & exhibits....filed 5/9/2005	V-5...884
Claimant's Motion to Reconsider Idaho Industrial Commission's Interlocutory Order Entered May 10, 2005 & affidavit & exhibits & memorandum....filed 5/11/2005	V-5...946
Claimant's Response to Defendants' Motion to Compel Attendance at Medical Evaluation & Motion to Enforce Subpoena Duces Tecum & attachments....filed 5/12/2005	V-5...998
Claimant's Motion for Permission to Appeal from Idaho Industrial Commission's Interlocutory Order Entered May 10, 2005 & May 12, 2005....filed 5/12/2005	V-5...1071
Claimant's Response to Defendants' Motion to Vacate & Reschedule Hearing & available dates....filed 5/13/2005	V-5...1075
Claimant's Motion to Reconsider Referee's Order of 6/3/2005 & 6/20/2005 & exhibits....filed 6/23/2005	V-6...1124
Claimant's Objection to Defendants' Motion to Compel Attendance of Claimant at EEG....filed 8/5/2005	V-6...1163
Claimant's Motion to Compel Discovery Responses & affidavit & exhibits....filed 8/22/2005	V-6...1193
Claimant's Further Motion to Compel Discovery Response; Motion to Vacate & Motion to Reset the Scheduled Hearing....filed 8/31/2005	V-6...1227
Claimant's Rule 10 Disclosure of Witnessed & Exhibits....filed 9/2/2005	V-6...1269
Claimant's Motion to Vacate & Reset Hearing....filed 9/8/2005	V-7...1408
Claimant's Objection to Defendants' Response to Motion to Vacate & Reset Hearing & exhibits....filed 9/9/2005	V-7...1414
Claimant's Pre-Hearing Memorandum....filed 9/12/2005	V-7...1426
Claimant's Motion to Vacate Post-Hearing Depositions of Dr. Richard W. Wilson & Dr. Cynthia Brownsmith for Failure to Submit Final Written Reports, as Post-Hearing Depositions used to Produce New Evidence & Testimony would be Contrary to Rule 10 E(4), J.R.P. & memorandum & exhibits....filed 9/23/2005	V-7...1441

Claimant's Motion to Reestablish Briefing Schedule & exhibits....filed 10/14/2005	V-7...1462
Claimant's Affidavit of F. LaMarr Heyrend, M.D. Establishing Foundation & Basis for Evidence Presented at Post-Hearing Deposition Held on 11/17/2005 filed 11/17/2005	V-7...1468
Claimant's Motion to Extend Time to Respond to Defendant's Motion to Strike Affidavit of F. LaMarr Heyrend, M.D. Establishing Foundation & Basis for Evidence Presented at Post-Hearing Deposition Held on 11/17/2005 & Augmented Objection to Exhibit 2 to Heyrend Deposition of 11/17/2005 & exhibits & affidavit....filed 12/8/2005	V-7...1480
Claimant's Response to Defendants' Motion to Strike Affidavit of F. LaMarr Heyrend, M.D. Establishing Foundation & Basis for Evidence Presented at his Post-Hearing Deposition Held on 11/17/2005 & Response to the Augmented Objection of Defendants to Exhibit 2 Attached to Heyrend Deposition of 11/17/2005....filed 1/3/2006	V-7...1489
Claimant's Response to Defendants' Objection to the Continuance of Post-Hearing....Deposition of Dr. F. LaMarr Heyrend, M.D., Duces Tecum & Further Reply to Motion to Strike Affidavit of F. LaMarr Heyrend, M.D., & exhibit....filed 1/11/2006.....	V-7...1515
Claimant Motion to Admit into Evidence Medical Treatises, Studies & Publications Complied & Identified by Dr. F. LaMarr Heyrend, M.D. as Exhibit 2 during his Post-Hearing Deposition (Duces Tecum) on 11/17/2005 filed 4/21/2006	V-8...1549
Claimant's Memorandum in Support of Claimant Motion to Admit into Evidence Medical Treatises, Studies & Publications Complied & Identified by Dr. F. LaMarr Heyrend, M.D. as Exhibit 2 during his Post-Hearing Deposition (Duces Tecum) on 11/17/2005 & exhibit....filed 5/8/2006.....	V-8...1552
Claimant's Motion for Leave to File 37 Page Brief....filed 10/6/2006.....	V-8...1579
Claimant's Motion to Extend Time to file Claimant's Reply Brief & affidavit....filed 11/17/2006	V-8...1584
Claimant's Motion to Strike Deposition Transcript of Cynthia Brownsmith, Ph.D. taken 7/14/2006 & Motion to Strike Reference to Deposition Testimony in Defendants' Post-Hearing Brief....filed 12/8/2006.....	V-8...1594
Claimant's Motion to Allow Claimant to File Memorandum in Excess of Thirty (30) Pages....filed 4/5/2007	V-8...1656
Claimant's Preliminary Memorandum in Support of Motion to Reconsider Findings of Fact, Conclusions of Law, & Recommendation Entered 3/2/2007; Motion to Reconsider Commission's Final Order Entered 3/16/2007; & Request for Hearing & exhibits & affidavit....filed 4/5/2007	V-8...1661
Defendants' Motion Compel Discovery & affidavit & exhibits....filed 1/28/2002	V-1...53

Defendants' Motion to Compel & Motion Stay Proceedings & affidavit....filed 10/28/2002	V-1...62
Defendants' Response to Motion to Vacate & Reset Hearing....filed 11/5/2002.....	V-1...74
Defendants' Motion to Compel Attendance at Independent Psychological Evaluation & memorandum & exhibits....filed 6/12/2003	V-1...86
Defendants' Motion to Dismiss Complaint or Limit Issues to be Tried at Hearing & memorandum & affidavit & exhibits....filed 3/30/2004	V-2...152
Defendants' Non-Objection Request Additional Time to Submit Claimant's Response to Defendants' Motion to Dismiss Complaint or Limit Issues to be Tried at Hearing....filed 4/13/2004.....	V-3...392
Defendants' Motion to Compel Discovery Responses & affidavit....filed 4/27/2004.....	V-4...643
Defendants' Motion In Limine & attachment....filed 5/5/2004.....	V-4...651
Defendants' Response to Request for Hearing....filed 11/2/2004	V-4...688
Defendants' Objection & Motion to Strike Letter of Vernon K. Smith dated 3/18/2005....filed 3/21/2005	V-5...853
Defendants' Request for Telephone Conference....filed 4/11/2005	V-5...862
Defendants' Motion to Compel Discovery Responses....filed 4/20/2005	V-5...867
Defendants' Reply in Support of Motion to Compel Discovery Responses....filed 4/27/2005...	V-5...877
Defendants' Response to Claimant's Objection to Defendants' Efforts to Schedule Claimant to Further Evaluations by a [sic] Medical Advocate & exhibits....filed 5/9/2005.....	V-5...920
Defendants' Response to Claimant's Motion for Reconsideration....filed 5/11/2005	V-5...974
Defendants' Motion to Compel Attendance at Medical Evaluation & affidavit & attachments....filed 5/11/2005	V-5...979
Defendants' Motion to Vacate & Reschedule Hearing & affidavit....filed 5/12/2005	V-5...992
Defendants' Request for Telephone Conference....filed 5/13/2005	V-5...1069
Defendant s' Objection to Claimant's Motion for Permission to Appeal from Idaho Industrial Commission's Interlocutory Order Entered May 10, 2005 & May 12, 2005, & Motion for Expedited Hearing....filed 5/19/2005	V-5...1083
Defendants' Response to Claimant's Motion for Permission to Appeal from Idaho Industrial Commission's Interlocutory Order Entered May 10, 2005 & May 12, 2005....filed 5/25/2005	V-5...1088

Defendants' faxed letter to Referee Donohue dated 5/26/2005 & attachments....filed 5/26/2005	V-5...1104
Defendants' Motion for Order to Attend Independent Medical Evaluation & for Production of Documents & affidavit & exhibits & addendum....filed 6/6/2005	V-6...1113
Defendants' Response Claimant's Motion to Reconsider Referee's Order of 6/3/2005 & 6/20/2005 & exhibits....filed 6/24/2005	V-6...1134
Defendants' Motion to Compel Attendance at Taking of Electroencephalogram (EEG)....filed 7/8/2005	V-6...1140
Defendants' Request for Telephone Conference....filed 7/8/2005	V-6...1145
Defendants' Motion to Compel Attendance at Taking of Electroencephalogram (EEG) & exhibits....filed 7/29/2005	V-6...1147
Defendants' Motion to Extend Discovery Deadline & for Pre-Hearing Telephone Conference & exhibits....filed 8/2/2005	V-6...1155
Defendants' Reply Brief in Support of Motion to Compel Attendance of Claimant at Electroencephalogram (EEG)....filed 8/5/2005	V-6...1168
Defendants' Motion to Compel Discovery Responses & affidavit & exhibits....filed 8/17/2005	V-6...1172
Defendants' Motion to Shorten Time....filed 8/17/2005	V-6...1182
Defendants' Motion to Shorten Time....filed 8/18/2005	V-6...1184
Defendants' Another Motion to Compel Attendance of Claimant at Electroencephalogram (EEG)....filed 8/18/2005	V-6...1189
Defendants' Motion to Quash Subpoena of Dr. Cynthia Brownsmith....filed 9/1/2005	V-6...1257
Defendants' Rule 10 Disclosure of Witness & Exhibits....filed 9/2/2005	V-6...1262
Defendants' Second Motion to Quash Subpoena of Dr. Cynthia Brownsmith....filed 9/6/2005	V-6...1282
Defendants' Motion In Limine & exhibits....filed 9/6/2005	V-7...1289
Defendants' Motion to Require Supplementation of Discovery Responses & affidavit & exhibits....filed 9/8/2005	V-7...1379
Defendants' Response to Motion to Vacate & Reset Hearing....filed 9/9/2005	V-7...1411
Defendants' Motion to Release Drs. Brownsmith & Wilson from Subpoenas....filed 9/9/2005	V-7...1422

Defendants' Response to Motion Vacate Post-Hearing Depositions of Dr. Richard W. Wilson & Dr. Cynthia Brownsmith for Failure to Submit Final Written Reports, as Post-Hearing Depositions used to Produce New Evidence & Testimony would be Contrary to Rule 10 E(4), J.R.P.....filed 9/28/2005.....	V-7...1453
Defendants' Response to Claimant's Motion to Reestablish Briefing Schedule....filed 10/14/2005.....	V-7...1466
Defendants' Motion to Strike Affidavit of F. LaMarr Heyrend, M.D. Establishing Foundation & Basis for Evidence Presented at Post-Hearing Deposition Held on 11/17/2005 & Augmented Objection to Exhibit 2 to Heyrend Deposition of 11/17/2005....filed 11/22/2005	V-7...1475
Defendants' Response to Motion to Extend Time....filed 12/8/2005	V-7...1487
Defendants' Objection to Notice of Continuance of Post-Hearing Deposition of Dr. F. LaMarr Heyrend, M.D., Duces Tecum & Reply in Support of Motion to Strike Affidavit of F. LaMarr Heyrend, M.D. ....filed 1/5/2006	V-7...1509
Defendants' Reply to Claimant's Response to Defendants' Objection to the Continuance of the Post-Hearing Deposition of Dr. F. LaMarr Heyrend, M.D., Duces Tecum & Further Reply to Motion to Strike Affidavit of F. LaMarr Heyrend, M.D. ....filed 1/17/2006.....	V-7...1526
Defendants' Motion to Clarify Status of Exhibits & affidavit & attachment....filed 2/2/2006 .	V-8...1537
Defendants' Request for Telephone Conference....filed 5/8/2006	V-8...1569
Defendants' Motion for Amended Briefing Schedule....filed 7/6/2006	V-8...1574
Defendants Response to Motion to Extend Time to File Claimant's Reply Brief....filed 11/20/2006	V-8...1590
Defendants' Response to Motion to Strike Deposition Transcript of Cynthia Brownsmith, Ph.D. taken 7/14/2006 & Motion to Strike Reference to Deposition Testimony in Defendants' Post-Hearing Brief & affidavit & exhibits filed 12/13/2006	V-8...1597
Defendants' Response to Motion to Reconsider....filed 4/19/2007.....	V-8...1748
Exhibit List and Amended Exhibit List	V-1...(i)
Findings of Fact, Conclusions of Law, & Recommendation....filed 3/16/2007	V-8...1629
Notice of Telephone Conference....filed 3/17/2005	V-4...698
Notice of Hearing & Discovery Order....filed 6/3/2005	V-6...1111
Notice of Telephone Conference....filed 5/11/2006.....	V-8...1571

Notice of Completion dated 10/1/07 V-8...1805

Notice of Appeal dated 7/2/2007 V-8...1770

ORDER:...Order Vacating Hearing....filed 12/12/2001 V-1...47

ORDER:...Order Compelling Discovery....filed 2/12/2002 V-1...60

ORDER:...Order Vacating & Resetting Hearing....filed 11/15/2002..... V-1...78

ORDER:...Order Compelling Discovery....filed 11/15/2002..... V-1...80

ORDER:...Order Vacating Hearing....filed 3/18/2003 V-1...84

ORDER:...Notice of Intent to Rule & Order....filed 6/18/2003 V-1...121

ORDER:...Order....filed 6/19/2003 V-1...150

ORDER:...Order Granting Additional Time....filed 4/14/2004 V-3...394

ORDER:...Order filed 4/29/2004 V-4...648

ORDER:...Order Denying Motion to Compel....filed 5/5/2004..... V-4...650

ORDER:...Order Vacating Hearing....filed 5/13/2004..... V-4...681

ORDER:...Order on March 24, 2005, Telephone Conference....filed 3/25/2005 V-5...860

ORDER:...Order & Notice of Hearing....filed 11/17/2004 V-4...692

ORDER:...Order on Claimant's Attendance at Evaluation....filed 4/12/2005..... V-5...865

ORDER:...Order Compelling Discovery....filed 4/27/2005..... V-5...883

ORDER:...Order on Claimant's Attendance at Second Medical Evaluation....filed 5/10/2005 ... V-5...944

ORDER:...Order on Claimant's Motion to Reconsider....filed 5/11/2005 V-5...977

ORDER:...Another Order on Claimant's Attendance at Second Evaluation....filed 5/12/2005 . V-5...1067

ORDER:...Order Vacating Hearing & Notice of Telephone Conference....filed 5/13/2005 V-5...1082

ORDER:...Orders on Motions....filed 6/3/2005 V-6...1109

ORDER:...Order on Attendance, Order on Production, &
Order on Request for Telephone Conference....filed 6/20/2005 V-6...1122

ORDER:...Order Compelling Discovery....filed 8/18/2005 V-6...1187

ORDER:..Order Compelling Attendance....filed 8/18/2005	V-6...1188
ORDER:..Addendum to Order Compelling Claimant's Attendance....filed 8/19/2005	V-6...1192
ORDER:..Order on Motion to Extend Discovery Deadline....filed 8/25/2005	V-6...1224
ORDER:..Order Compelling Discovery....filed 8/25/2005	V-6...1225
ORDER:..Order Denying Motion to Compel....filed 8/29/2005	V-6...1226
ORDER:..Order on Motion to Compel & Motion to Vacate Hearing....filed 9/1/2005.....	V-6...1260
ORDER:..Order on Motion to Quash Subpoena....filed 9/1/2005	V-6...1261
ORDER:..Order on Second Motion to Quash Subpoena....filed 9/6/2005.....	V-6...1288
ORDER:..Amended Order on Second Motion to Quash Subpoena....filed 9/7/2005	V-7...1378
ORDER:..Commission's letter Re: Motions are DENIED....filed 9/9/2005	V-7...1425
ORDER:..Order Establishing Briefing Scheduled....filed 9/16/2005	V-7...1439
ORDER:..Order on Motions to Vacate Depositions....filed 9/30/2005.....	V-7...1460
ORDER:..Order on Motions....filed 1/27/2006.....	V-7...1534
ORDER:..Order on Motions & Briefing Schedule....filed 5/19/2006.....	V-8...1572
ORDER:..Order Establishing Briefing Schedule....filed 8/4/2006	V-8...1577
ORDER:..Order & Amended Order Establishing Briefing Schedule....filed 10/23/2006	V-8...1582
ORDER:..Order & Finals Order Establishing Briefing Schedule....filed 11/22/2006	V-8...1592
ORDER:..on Findings, Conclusions, & Recommendation....filed 3/16/2007	V-8...1654
ORDER:..Order Disallowing Brief in Excess of 30 Pages....filed 4/11/2007.....	V-8...1746
ORDER:..Order Denying Reconsideration....filed 5/21/2007	V-8...1768
Second Amended Notice of Appeal dated 8/29/2007	V-8...1793
Stipulation to Vacate Hearing....filed 3/17/2003.....	V-1...82
Workers' Compensation Complaint....filed 7/16/2001.....	V-1...1

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

2005 MAR 21 P 4:31
RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	OBJECTION AND MOTION TO
	)	STRIKE LETTER OF VERNON K.
ADA COUNTY SHERIFF'S OFFICE,	)	SMITH DATED MARCH 18, 2005
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

COME NOW Defendants, by and through Elam & Burke, P.A., their attorneys of record
herein, and hereby object to and move to strike the letter of Vernon K. Smith dated March 18,

OBJECTION AND MOTION TO STRIKE LETTER OF VERNON K. SMITH
DATED MARCH 18, 2005 - 1

G:\SHARED\0179\9303\PLEADINGS\obj & mo to strike.wpd

953

2005, addressed to Referee Douglas A. Donohue "Attention: Dena Burke," (hereinafter "Smith letter") on the following grounds:

Claimant's counsel apparently objects to the scheduling of the telephone conference at the time indicated by the Referee. It was only necessary for Claimant's counsel to file an objection to the scheduled telephone conference. The remainder of the Smith letter is impertinent, immaterial, and redundant, and should be stricken.

The Smith letter is an ex parte contact by opposing counsel disguised as correspondence directed to the secretary of an Industrial Commission Referee. The reason Defendants requested a telephone conference with the Referee was to permit both counsel to submit their respective arguments pertaining to the circumstances under which a follow-up interview of Claimant, and an interview with Claimant's husband, could be conducted by Defendants' expert, Dr. Cynthia Brownsmith. In a transparent effort to advance his case by making ex parte representations to the Referee, thinly disguised as a letter to the Referee's secretary, Claimant's attorney makes unsubstantiated assertions to raise a host of unwarranted, and unsubstantiated "concerns" that are plainly intended to suggest that Claimant is entitled to obstruct a follow-up examination of Claimant by Defendants' expert.

Dr. Brownsmith has not seen or evaluated Claimant since 2003. Hearing in this matter is scheduled for May 2005. Defendants respectfully submit that their expert is entitled to conduct a follow-up interview with Claimant under reasonable circumstances. The Idaho Supreme Court has spelled out what accommodations may reasonably be required. *Hewson v. Asker's Thrift*

Shop, 120 Idaho 164, 814 P.2d 424 (1991). *See also, Brewer v. La Crosse Health & Rehab*, 138 Idaho 859, 71 P.3d 458 (2003).

The Smith letter makes numerous assertions about what Claimant's expert, Dr. Heyrend, believes, and about his "concerns." There is no affidavit of Dr. Heyrend to substantiate these assertions, which are truly self-serving and hearsay. These assertions are immaterial and impertinent.

Without providing any substantiating evidence, opposing counsel asserts Claimant's expert has diagnosed Claimant with post traumatic stress disorder. Then, assuming this circumstance to have already been proven, Claimant's counsel contends that Dr. Brownsmith "lacks sufficient knowledge of PTSD to appropriately provide a correct and relevant diagnosis" of Claimant's injuries "and resulting PTSD. . . ." (Smith letter, p. 1.)¹ This is a textbook example of the logical fallacy of circular argument. In fact, Claimant's counsel offers no foundation for establishing that he has any unique ability to determine whether Dr. Brownsmith, or anyone else, has the professional qualifications, credentials or experience to make appropriate diagnoses. This argument is impertinent and immaterial and should be stricken.

Defendants object to the efforts of Claimant's counsel to suggest that Dr. Brownsmith's findings were not "substantiated" because Claimant's counsel prepared a self-serving list of purported problems with Dr. Brownsmith's report, after the fact. He then asserts Dr. Brownsmith has been remiss by not responding to his list. The weight, if any, to be accorded this

¹Significantly, Claimant's other experts, Joe Lipetzky, Psy.D., agreed with Dr. Brownsmith in his report of April 29, 2004, that Claimant does not have PTSD.

document is for the Industrial Commission to determine. Claimant's counsel has only created a straw man and then knocked it down.

Claimant's attorney comments "Once you and Mr. Donohue have an opportunity to fully review the materials . . .," suggesting the Referee's secretary has any interest or involvement in these matters. Claimant's attorney proposes the Referee (or his secretary, apparently,) should "contact my office to indicate a need to reschedule a time for any needed telephone conference." (Smith letter, p. 3.) Claimant's counsel does not suggest any reason why the Referee should be troubled to contact Claimant's counsel to indicate a need to reschedule the telephone conference. It is incumbent on Claimant's counsel to object timely to the scheduling of the telephone conference.

Defendants object to the ex parte communication between Claimant's counsel and the Referee. The letter of Claimant's counsel is improper and consists almost exclusively of impertinent, immaterial and unsubstantiated matter, logical fallacies and irrelevant allegations, such as those concerning purported county violations of federal, state and county laws, over which this Commission has no jurisdiction and which are irrelevant to the instant litigation. Smith's letter should be stricken.

Respectfully submitted this 21 day of March, 2005.

ELAM & BURKE, P.A.

By:

Jon M. Bauman, Of the Firm
Attorneys for Defendants

OBJECTION AND MOTION TO STRIKE LETTER OF VERNON K. SMITH
DATED MARCH 18, 2005 - 4

G:\SHARED\0179\9303\PLEADINGS\obj & mo to strike.wpd

856

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 21 day of March, 2006, I caused a true and correct
copy of the above and foregoing instrument to be sent by the method indicated below to:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail (postage prepaid)
☐ Hand Delivery
☐ Federal Express
☐ Facsimile Transmission
Fax: 345-1129
Phone: 345-1125


Jan M. Bauman

Law Offices of Vernon K. Smith
1900 West Main Street, Boise, Idaho 83702
Telephone: (208) 345-1125
Fax: (208) 345-1129



Fax

To: Dena Burke From: VK Smith
Fax: 332-7558 Pages: 2
Phone: Date: 3/24/05
Re: CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Original by U.S. Mail

• **Comments:** The pages comprising this facsimile transmission contain confidential information from Vernon K. Smith. This information is solely for use by the individual entity named as the recipient hereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so we may arrange to retrieve this transmission at no cost to you.

Letter from Dr. F. LaMar Heynend

INDUSTRIAL COMMISSION

MAR 24 2005

FILED

858

INTERMOUNTAIN NEUROPSYCHIATRIC CENTER

March 24, 2005

Vernon K. Smith
1900 West Main Street
Boise, Idaho 83702

RE : Stacy A. Gibson

Dear Mr. Smith :

I am in total agreement that it would not be beneficial for Stacy to have another meeting with Dr. Cynthia Brownsmith . After her last meeting in August of 2003 (date of meeting August 27, 2003) it was quite apparent that Stacy was upset from their encounter.

Stacy has a diagnosis of Post Traumatic Stress Disorder and I have been providing her with out - patient psychiatric care and medication management since December of 2002 to present .

If Stacy needs to be examined by another psychologist it would be best if she is seen by someone who specializes in Post Traumatic Stress Disorder and has a clear understanding of this impairment .

If you are in need of any additional information regarding the above cited , please do not hesitate to contact me .

Sincerely yours,

F. La Marr Heyrend M.D.
F. La Marr Heyrend M.D.

INDUSTRIAL COMMISSION

MAR 24 2005

FILED

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	IC 01-015332
)	
v.)	
)	
ADA COUNTY SHERIFF'S OFFICE,	)	ORDER ON MARCH 24, 2005,
	)	TELEPHONE CONFERENCE
Employer,)	
)	
and)	
)	
IDAHO STATE INSURANCE FUND,	)	FILED
)	
Surety,	)	MAR 25 2005
Defendants.	)	INDUSTRIAL COMMISSION

On March 24, 2005, Referee Douglas A. Donohue conducted a telephone conference with all parties represented. Pursuant to the telephone conference, the Referee reviewed the file herein and is fully advised in the premises,

HEREBY ORDERS that Claimant shall attend the evaluation with Dr. Cynthia Brownsmith as scheduled at Dr. Brownsmith's availability.

FURTHER, Claimant is allowed to bring a tape recorder to the evaluation. Claimant is allowed to bring only one (1) treating physician. Claimant's husband is allowed to attend the evaluation to the extent that he does not unreasonably obstruct Dr. Brownsmith's evaluation. Dr. Brownsmith may exclude Claimant's husband at any time at her sole discretion.

FURTHERMORE, Defendants' Motion to Strike is DENIED.

IT IS SO ORDERED.

DATED this 25th day of March, 2005.

INDUSTRIAL COMMISSION

ATTEST:

Dona K. Burke
Assistant Commission Secretary



Douglas A. Donohue, Referee

ORDER ON MARCH 24, 2005, TELEPHONE CONFERENCE - 1

960

CERTIFICATE OF SERVICE

I hereby certify that on 25th day of March, 2005, a true and correct copy of the foregoing **ORDER ON MARCH 24, 2005, TELEPHONE CONFERENCE** was served by regular United States Mail upon each of the following:

Vernon K. Smith
1900 West Main Street
Boise, ID 83702

Jon M. Bauman
P.O. Box 1539
Boise, ID 83701

db

Dena K. Burke

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

2005 APR 11 A 11:29
RECEIVED
INDUSTRIAL COMMISSION

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	REQUEST FOR TELEPHONE
	)	CONFERENCE
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

Defendants, by and through the law firm of Elam & Burke, P.A., their attorneys of record herein, hereby request a telephone conference concerning enforcement of the Referee's Order of March 25, 2005. On April 6, 2005, defense counsel transmitted by facsimile and regular mail to

862

Claimant's attorney a notice that Claimant was scheduled to be interviewed by Dr. Cynthia Brownsmith beginning at 9:30 a.m. on April 14, 2005. On April 8, 2005, Claimant's counsel wrote back and said this was not convenient for Claimant and that it had not yet been ascertained whether Dr. Lipetzky was available in case Dr. Heyrend was unable to attend the interview at the last minute, due to some unforeseeable emergency. Claimant's counsel proposed several alternate dates, all occurring during the last week of April.


Defendants maintained the Referee indicated Claimant should be evaluated according to Dr. Brownsmith's availability, as appears in the Referee's Order. Dr. Brownsmith requires twenty-four (24) hours notice if Claimant is not going to attend the interview. Further, Defendants have engaged the services of John Glenn Hall to record the interview and Mr. Hall will also require notice if Claimant does not attend. Defendants respectfully maintain that Claimant was given reasonable notice and that scheduling the interview with Dr. Brownsmith for the end of April is late, inasmuch as the hearing is only a month later and Dr. Brownsmith needs adequate time to prepare her analysis of the interview. It also follows that Claimant's expert or experts will need time to analyze Dr. Brownsmith's conclusions in advance of the Rule 10 deadline.

For the foregoing reasons, Defendants respectfully request a telephone conference be held in this matter to ascertain whether Claimant should attend the interview with Dr. Brownsmith as scheduled, on April 14, 2005, and if not, that Dr. Brownsmith be afforded twenty-four (24) hours advance notice. Dr. Brownsmith's request for advance notice is not unreasonable, particularly inasmuch as her father is 82 years of age and presently is confined to a hospital with cancer, from

which he is not expected to return. Accordingly, it is important for Dr. Brownsmith that she be able to count on a time and place when Claimant will be present to be interviewed.

Respectfully submitted this 11th day of April, 2005.

ELAM & BURKE, P.A.

By: 
Jon M. Bauman, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 11th day of April, 2005, I caused a true and correct copy of the above and foregoing instrument to be sent by the method indicated below to:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail (postage prepaid)
☐ Hand Delivery
☐ Federal Express
☒ Facsimile Transmission
Fax: 345-1129
Phone: 345-1125


Jon M. Bauman

864

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	IC 01-015332
)	
v.)	
)	
ADA COUNTY SHERIFF'S OFFICE,	)	ORDER ON CLAIMANT'S
	)	ATTENDANCE AT EVALUATION
Employer,)	
)	
and)	
)	
IDAHO STATE INSURANCE FUND,	)	FILED
)	
Surety,	)	APR 12 2005
Defendants.	)	INDUSTRIAL COMMISSION

On April 11, 2005, Defendants filed a Request for Telephone Conference regarding Claimant's attendance at an evaluation with Dr. Cynthia Brownsmith currently scheduled for April 14, 2005. A prior order required Claimant to attend at Dr. Brownsmith's availability. In a prior telephone conference, the Referee made clear that the availability of any other physician was not a basis for scheduling. The Referee reviewed the file herein and is fully advised in the premises,

HEREBY ORDERS that Claimant will attend the evaluation with Dr. Cynthia Brownsmith as scheduled on April 14, 2005.

FURTHER, if Claimant fails to attend and cooperating in the evaluation as scheduled, the Referee may impose sanctions up to and including recommending dismissal of Claimant's case to the Commissioners.

IT IS SO ORDERED.

DATED this 12th day of April, 2005.

INDUSTRIAL COMMISSION

ATTEST:

Dana K. Burke
Assistant Commission Secretary



Douglas A. Donohue
Referee

ORDER ON CLAIMANT'S ATTENDANCE AT EVALUATION - 1

865

CERTIFICATE OF SERVICE

I hereby certify that on 12th day of April, 2005, a true and correct copy of the foregoing **ORDER ON CLAIMANT'S ATTENDANCE AT EVALUATION** was *Sent by Facsimile Machine Process ONLY* upon each of the following:

Vernon K. Smith Fax #: 345-1129
1900 West Main Street
Boise, ID 83702

Jon M. Bauman Fax #: 384-5844
P.O. Box 1539
Boise, ID 83701

db

Dena K. Burke

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	MOTION TO COMPEL
	)	DISCOVERY RESPONSES
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	

2005 APR 20 P 3:43
RECEIVED
INDUSTRIAL COMMISSION

COME NOW Defendants in the above-entitled matter, by and through Elam &
Burke, P.A., their attorneys of record herein, and, pursuant to Rules 7 and 16, Judicial Rules of
Procedure of the Idaho Industrial Commission, hereby move the Industrial Commission for an

867


order compelling discovery responses on the grounds that Claimant has failed to supplement her discovery responses as requested in Defendants' Request for Supplementation of Discovery Responses filed March 31, 2005.

Defendants, therefore, respectfully move this Commission for its order compelling Claimant to respond to Defendants' Request for Supplementation of Discovery or, in the event of failure to comply, to impose sanctions for such failure.

This motion is based on the affidavit of counsel for Defendants, filed herewith.

DATED this 20 day of April, 2005.

ELAM & BURKE, P.A.

By: 
Jeff M. Bauman, of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of April, 2005, I caused the above and foregoing instrument to be served as follows:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Federal Express
☐ Via Facsimile


Jeff M. Bauman

Attorneys for Defendant

STACY A. GIBSON,
Claimant,
v.
ADA COUNTY SHERIFF'S OFFICE,
Employer,
and
STATE INSURANCE FUND,
Surety,
Defendants.

2005 APR 20 P 3:43
RECEIVED
INDUSTRIAL COMMISSION

JON M. BAUMAN, having first been duly sworn, upon his oath deposes and says as

AFFIDAVIT OF COUNSEL - 1

969

1. I am an attorney in the employ of the law firm of Elam & Burke, P.A., attorneys of record at all relevant times for Defendants in the above-entitled matter. In that capacity, I have personal knowledge of the contents of the file and of all matters set forth herein.

2. On March 31, 2005, Defendants caused to be served on counsel for Claimant Defendants' Request for Supplementation of Discovery Responses.

3. As of the date hereof, Claimant's counsel has failed to respond or object in any fashion whatsoever to Defendants' Request for Supplementation of Discovery Responses.

4. The delay caused by Claimant is prejudicial to Defendants in preparing for the hearing which is currently scheduled to commence May 26, 2005.

5. Your affiant makes this affidavit in support of Defendants' Motion to Compel Discovery Responses.

Further your affiant sayeth naught.

DATED this 20 day of April, 2005.


Jon M. Bauman

SUBSCRIBED AND SWORN TO before me this 20th day of April, 2005.




Notary Public for Idaho

Residing at Bow

Commission Expires 10/18/05

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of April, 2005, I caused a true and correct copy of the above and foregoing instrument to be sent by the method indicated below to:

Vernon K. Smith (ISB #1365)
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail (postage prepaid)
☐ Hand Delivery
☐ Federal Express
☐ Facsimile Transmission


Jon M. Bauman

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1385
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

o0o
STACY A. GIBSON)
Claimant,)
v.) CLAIMANT'S RESPONSE
ADA COUNTY SHERIFF'S OFFICE,) TO DEFENDANTS' MOTION
Employer,) TO COMPEL DISCOVERY
and) RESPONSES
STATE INSURANCE FUND,)
Surety,)
Defendants.)
o0o

RECEIVED
INDUSTRIAL COMMISSION
2005 APR 26 P 4:09

COMES NOW The Claimant above-named, through counsel, Vernon K. Smith, and does respectfully move the Idaho Industrial Commission to deny Defendants' Motion as presently submitted, seeking to compel Claimant to respond to Defendants' alleged Request for Supplementation of Discovery Responses, filed March 31, 2005, for the reasons and upon the grounds as follows:

1. That Claimant's counsel and office staff have not received this purported Request for Supplementation of Discovery Responses, claimed to have been filed March 31, 2005 with the Industrial Commission.

872

04/26/2005 04:04 VERNON 11TH → 3342321

NO. 278 P03

2. Claimant has been engaged in supplementation of discovery in any event, and on November 9, 2004, Claimant had submitted the Sixth Supplemental Response to Defendants' previous Request for Production of Documents and Interrogatories that was submitted on October 28, 2004; that in the last disclosure, Claimant therein notified Defendants an evaluation and report would be forthcoming from Dr. F. LaMarr Heyrend, M.D., and it would be supplemented upon receipt.

3. That Defendants' counsel was furthermore notified on April 6, 2005, Dr. Heyrend had just recently conducted an electroencephalogram (EEG) brain-mapping examination on Claimant on March 31, 2005, as he was utilizing an objective means available to him to demonstrate the nature and extent of Claimant's diagnosed Post Traumatic Stress Disorder (PTSD) that she had sustained as a result of the confrontational trauma experienced by the agents from Ada County, when the Sheriff detectives from the Sheriff's Office confronted her over the County's wage overpayment and direct deposit issues.

4. That on April 6, 2005, Defendants' counsel was again notified by letter from Claimant's counsel (copy attached hereto) that as soon as Claimant's counsel came into possession of Dr. Heyrend's completed materials, counsel would undertake to supplement Defendants' discovery requests with documentation of reports and evaluations to Defendants.

5. As a consequence of Dr. Heyrend's office commitments, patient practice and program participation, he has not had sufficient time to complete this latest assessment and final evaluation reports of Claimant, but it will be soon forthcoming.


04/26/2005 04:04 VERNON P IITH → 3342321

NO. 278 P04

6. On April 25, 2005, Defendants' counsel contacted the office staff of Claimant's counsel, requesting available dates of Claimant's counsel and Dr. F. LaMarr Heyrend for the purpose of scheduling a further deposition of Dr. Heyrend, and once Defendants' counsel proceeded to conduct the deposition of Dr. Heyrend, all medical documentation formulated, including the brain mapping electroencephalogram (EEG) would be available to counsel at that time.

Claimant moves the Idaho Industrial Commission deny Defendants' request, as sponsored by their present, unserved Motion to Compel, as said Claimant will continue to submit any and all further responses in supplementation to the original Request for Discovery, as any information becomes available to Claimant's counsel.

Dated this 26th day of April 2005.


Vernon K. Smith
Attorney for Claimant

874

04/26/2005 04:04 VERNON SMITH → 3342321

NO. 278 005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 21st day of April 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho 83720-0041

()
(☒)
()

U.S. Mail
Fax
Hand Delivered

Jon M. Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701

()
(☒)
()

U.S. Mail
Fax
Hand Delivered


Vernon K. Smith

875

04/26/2005 04:04 VERNON K SMITH → 3342321

NO. 278 006



VERNON K. SMITH
ATTORNEY AT LAW
1900 W. MAIN STREET
BOISE, IDAHO 83702
208-345-1125
208-345-1129 (FAX)

April 6, 2005

Jon M. Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701-1539

RE: Stacy A. Gibson
I.C. Case No. 01-015332

2005 APR 26 PM 4:09
RECEIVED
INDUSTRIAL COMMISSION

Dear Mr. Bauman:

On March 31, 2005, Dr. Heyrend conducted an electroencephalogram (EEG) brain-mapping examination on Stacy Gibson, utilizing an objective means of demonstrating the nature and extent of Ms. Gibson's previously diagnosed Post Traumatic Stress Disorder (PTSD) sustained as a result of the confrontational trauma experienced when agents of the Ada County Sheriff's Office confronted her over the County's wage overpayment issue.

As soon as we have possession of Dr. Heyrend's completed materials, I will undertake to supplement your discovery with that documentation and will forward a copy of that report and evaluation to your office.

In the interim, you may desire to schedule a further deposition of Dr. Heyrend, to ascertain his medical analysis and reconfirmed psychiatric opinion, so you may share that information with Dr. Cynthia Brownsmith in the coming weeks. If you have questions, please so advise. Until then, I remain,

Yours very truly,


Vernon K. Smith

VKS/jmg

cc: F. Lamarr Heyrend, M.D.

876

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

2005 APR 27 P 4:15
RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	DEFENDANTS' REPLY IN
	)	SUPPORT OF MOTION TO
ADA COUNTY SHERIFF'S OFFICE,	)	COMPEL DISCOVERY
	)	RESPONSES
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

Defendants, by and through Elam & Burke, P.A., their attorneys of record herein, hereby
reply to Claimant's Response to Defendants' Motion to Compel Discovery Responses.

Rule 7(C), J.R.P., expressly provides that procedural matters relating to discovery, except sanctions, shall be controlled by the appropriate provisions of the Idaho Rules of Civil Procedure. Rule 26(e), I.R.C.P., establishes when a party is under a duty to supplement discovery responses. A party is under a duty seasonably to supplement discovery responses pertaining to the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony. In addition, a party is under a duty seasonably to amend a prior response if a party obtains information that a response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. In addition, the rule provides that a duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

In this case, Claimant has failed to comply with the duty imposed by Rule 26(e), I.R.C.P. As Claimant points out in the letter of Claimant's counsel dated April 6, 2005, Dr. Heyrend conducted an electroencephalogram brain-mapping examination of Claimant on March 31, 2005. It is almost one month later. Nothing about that study has been disclosed to Defendants apart from the fact that it was performed on March 31. Plainly, this study pertains to the subject matter on which an expert is expected to testify and the substance of his testimony. Accordingly, a duty to supplement discovery is automatic pursuant to Rule 26(e)(1). The hearing in this matter begins in less than one month. The Rule 10 deadline is May 16, 2005 — three weeks away. If Claimant has undergone an electroencephalogram, Defendants are entitled to have an expert analyze this study. Defendants have never received any notice whatsoever that Claimant was

878

going to undergo electroencephalogram or that Claimant proposed to rely on such a study to prove her case. This matter was already set for hearing to begin on May 13, 2004. Claimant never disclosed prior to that hearing date, or at any time until April 6, 2005, that she intended to rely on the testimony of an expert who would be conducting or had conducted an electroencephalogram.

Defendants reasonably require that the electroencephalogram, and the means by which it was administered and interpreted, should be subject to inspection and examination by their own expert. Now, at the eleventh hour, Claimant asserts that Dr. Heyrend's materials would be provided "as soon as Claimant's counsel came into possession" of them. Claimant maintains that Dr. Heyrend "has not had sufficient time to complete this latest assessment." (Claimant's Response, p. 2.) Defendants respectfully submit that this is nothing but trial by ambush. Dr. Heyrend was identified as Claimant's expert long before the first hearing was scheduled to begin in May 2004. Now, Claimant asks Defendants and the Commission to believe that their duty to automatically supplement discovery may be suspended at Dr. Heyrend's personal convenience, even though it has been almost one month since Dr. Heyrend performed the test, and it is only three weeks until the Rule 10 deadline.

Defendants respectfully submit that it is unsatisfactory that they should not be apprised of the merits of Claimant's case — especially where this matter has been set for hearing once before — until it is convenient for Claimant's expert. Defendants point out that none of Dr. Heyrend's chart notes or other records have been provided to Defendants since November 2004.

Nevertheless, Claimant disclosed to Dr. Brownsmith during the follow-up interview on April 14, 2005, that Dr. Heyrend has continued to treat her and is still prescribing medication for her.

In addition, Claimant disclosed to Dr. Brownsmith on April 14, 2005, that Claimant had been laid off work with her previous employer, had received unemployment benefits, had worked thirty to thirty-five hours per week for another employer, and had obtained additional employment at a wage of \$12.00 per hour. None of this information was provided by Claimant in her supplemental discovery responses in November 2004, despite the fact that Claimant was off work approximately ten months before she obtained her new job. Claimant has failed to supplement discovery with this additional information.

Throughout this litigation, Claimant has repeatedly refused to respond to discovery unless motions to compel were filed. Requests to supplement discovery have been routinely ignored. Defendants respectfully maintain that this constitutes a pattern of abuse that should be subject to sanction. Most urgently, however, Claimant should not be allowed to fail to disclose newly-generated evidence until it suits their expert to provide it.

Given that Claimant had an automatic duty pursuant to Rule 26(e)(1) to supplement discovery, it is immaterial whether Claimant received Defendants' Request for Supplementation of Discovery, which was in fact mailed on March 31, 2005. Significantly in this regard, Defendants' Motion to Compel Discovery was not served until April 20, 2005. Claimant's counsel, in his letter of April 6, 2005 — dated two weeks before Defendants filed their Motion to Compel — represented that Claimant would supplement Defendants' discovery requests as soon as Claimant's counsel obtained Dr. Heyrend's "completed materials." It is apparent from this

880

letter that Claimant's counsel was well aware that Defendants were seeking supplementation of their discovery requests and that Defendants were entitled to supplementation of their discovery responses.

Given the lateness of these developments and the lack of any assurance that Defendants will be provided with Dr. Heyrend's findings on a timely basis, it may be necessary once again to vacate the hearing in this matter. This is attributable solely to Claimant's failure to have Dr. Heyrend perform this evaluation in a timely manner. This matter was scheduled to go to hearing almost a year ago. Presumably, Claimant had prepared her case prior to the hearing scheduled to begin in May 2004. Now, Claimant has developed a novel piece of evidence based on an electroencephalogram which was not performed until March 31, 2005 — less than two months before hearing. A month later, the report of that evaluation still has not been prepared. Defendants are severely prejudiced by their inability to analyze this evidence or obtain any kind of expert testimony with respect to it. Defendants respectfully submit that their Motion to Compel Discovery should be granted. Defendants renew their request for sanctions under Rule 16, J.R.P.

Respectfully submitted this 27 day of April, 2005.

ELAM & BURKE, P.A.

By: 

Jon M. Bauman, of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of April, 2005, I caused the above and foregoing instrument to be served as follows:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Federal Express
☒ Via Facsimile


Jon M. Bauman

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON,

Claimant,

v.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 01-015332

ORDER COMPELLING DISCOVERY

FILED

APR 27 2005

INDUSTRIAL COMMISSION

On April 20, 2005, Defendants filed a Motion to Compel Discovery Responses, and Claimant filed a response thereto on April 26, 2005. The Referee having reviewed the file and being fully advised in the premises,

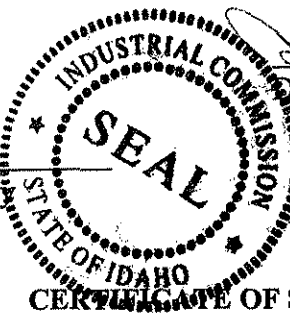
HEREBY ORDERS that the Claimant respond within 10 days from the date of this Order to Defendants' discovery requests which were served upon her on or about March 31, 2005. Claimant shall also file a notice of compliance with the Industrial Commission no later than 10 days from the date of this Order. **Sanctions are reserved as an issue for hearing.**

DATED this 27th day of April, 2005.

INDUSTRIAL COMMISSION

ATTEST:

Dena K. Burke
Assistant Commission Secretary



Douglas A. Donohue, Referee

I hereby certify that on 27th day of April, 2005, a true and correct copy of the foregoing **ORDER COMPELLING DISCOVERY** was served by regular United States Mail upon each of the following:

Vernon K. Smith Fax #: 345-1129
1900 West Main Street
Boise, ID 83702

Jon M. Bauman Fax #: 384-5844
P.O. Box 1539
Boise, ID 83701

db

Dena K. Burke

ORDER COMPELLING DISCOVERY - 1

883

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

o0o
)
STACY A. GIBSON) I.C. Case No. 01-015332
)
)
Claimant,)
)
)
v.)
)
ADA COUNTY SHERIFF'S OFFICE,)
)
)
Employer,)
)
)
and)
)
)
STATE INSURANCE FUND,)
)
)
Surety,)
)
Defendants.)
o0o

CLAIMANT'S OBJECTION TO
DEFENDANTS' EFFORTS TO
SCHEDULE CLAIMANT TO
FURTHER EVALUATIONS BY
A MEDICAL ADVOCATE

2005 MAY - 9 A 8:27
RECEIVED
INDUSTRIAL COMMISSION

COMES NOW The Claimant above-named, through counsel, Vernon K. Smith, and does respectfully move the Idaho Industrial Commission to deny the efforts of Defendants, State Insurance Fund (SIF) and Ada County, to require Claimant to submit to even further medical evaluation, as scheduled by Jewel Owen, State Insurance Fund, on April 28, 2005 (Exhibit 1), for the reasons and upon the grounds as follows:

1. Claimant has suffered a severely traumatic disturbance because of Ada County's misconduct, causing her to be diagnosed with severe Post Traumatic

ORIGINAL

884

Stress Disorder (PTSD) by one psychiatrist, Dr. F. LaMarr Heyrend, M.D., who has formulated his practice to include diagnosis and treatment of PTSD victims, and Claimant has also been diagnosed as also suffering now from Panic Disorder with Agoraphobia by another clinical psychologist, Dr. Joe A. Lipetzky, Psy.D.; that Claimant has been repeatedly examined by Defendants' "forensic" psychologist, Dr. Cynthia Brownsmith, who has served only to re-victimize Claimant each time, and at this late stage, Claimant should be under no further obligation to submit to any further medical evaluations requested by Defendants, as she has complied fully with the provisions of § 72-433, Idaho Code. Claimant has accommodated the previous requests made by Defendants, despite the effects of re-victimization, and contrary to the medical opinion of her treating psychiatrist, which has resulted also from the follow-up evaluations of Claimant by Dr. Brownsmith; that Claimant made herself available for evaluation by Dr. Cynthia Brownsmith (psychologist) on June 20th, June 24th, July 11, 2003, and on April 14, 2005, at the reluctance and contrary to the objections and medical advice of Claimant's psychiatrist. There was great reaction and re-victimization occurring each time that caused concern particularly from Claimant's psychiatric treating physician, F. LaMarr Heyrend, M.D., who feels Claimant will not benefit from these evaluations (See Exhibits 2, 3 and 4).

2. After being questioned for over two (2) hours during Dr. Brownsmith's evaluation on April 14, 2005, Claimant became extremely disconcerted, angry, crying and explosive, and was clearly victimized, as confirmed on the video tape taken by Defendants; Claimant had suffered at that moment a severe panic attack, as Dr. Brownsmith continued to ignore Claimant's concerns over the multitude of

inaccuracies, fabrications and misstatements in Dr. Brownsmith's August 27, 2003 report, created from earlier stressful evaluations, and Claimant's efforts to discuss the glaring errors and need for honesty and correction was being brushed off, diluted and ignored.

3. Because Dr. Brownsmith does not deal with disorders of the brain, like a psychiatrist is doing in the treatment and chosen course of therapy, Dr. Brownsmith is viewed as lacking the appropriate training and education to comprehend, diagnose or evaluate Claimant's Post Traumatic Stress Disorder (PTSD) (See Exhibit 3), and to demonstrate that fact, Dr. Brownsmith could not assist Claimant with any means of medical treatment to calm Claimant's reactionary outburst, and Claimant was simply left to leave Dr. Brownsmith's office, in her state of heightened outrage. Claimant's husband was required to attend to Claimant's immediate medical need, as she was hyperventilating, shaking and crying uncontrollably, experiencing dizziness, blurred vision, and was clearly in need of immediate medical attention; Claimant could not return to her work for the remainder of the day because of those severe injuries inflicted upon Claimant by Dr. Brownsmith on April 14, 2005, and medical treatment was sought from Dr. Heyrend.

4. This April 14th session came as a result of the March 25, 2005 order from the Idaho Industrial Commission, directing Claimant to attend a further evaluation with Dr. Cynthia Brownsmith, scheduled at Dr. Brownsmith's choosing, and no consideration or accommodation given for Claimant's doctor's schedules for available participation.

The session was scheduled by letter dated April 6, 2005 without providing Claimant any professional courtesy, as Defendants' counsel, Mr. Jon Bauman, unilaterally undertook to schedule Claimant for evaluation by Dr. Brownsmith, without accommodating any other schedule, preventing any treating therapist attendance. This unilateral scheduling was viewed as being in contradiction of Idaho law, as all Industrial Commission proceedings are to be simple, accommodating to claimants, and above all are to seek justice. See Hartman v. Double L Manufacturing, Employer, and Everest National Insurance Company, Surety, Idaho Supreme Court, Docket No. 30372, filed April 6, 2005; Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990).

5. This latest request of April 28, 2005, now received from SIF for Claimant to be evaluated by Dr. Richard D. Wilson, is not only unaccommodating to Claimant, but perceived by Claimant as being a course of conduct that seriously alarms, annoys or harasses Claimant (who is being made a victim) and does cause a reasonable person (who is suffering from PTSD) to experience substantial emotional distress, and pursuant to Idaho Criminal Law, § 18-7906, Idaho Code, is perceived as being a form or consequential effect of "medical" stalking technique.

On April 26, 2005, Defendants' counsel, Mr. Jon Bauman, requested a date for the express purpose of deposing Dr. F. LaMarr Heyrend, M.D. On April 27, 2005, Claimant's counsel's office staff provided Mr. Bauman with Dr. Heyrend's future dates as were then available and Mr. Bauman stated any date beyond May 6, 2005 was unacceptable to him and would not be considered. Consequently, Mr. Bauman scheduled Dr. Heyrend's deposition for May 5, 2005.

This latest effort of the SIF and Ada County to have Claimant evaluated by this known neurological advocate, Dr. Wilson, can be seen only as one of two possibilities. The first being an acknowledgement Dr. Brownsmith was not qualified to address PTSD, or secondly, to cause Claimant more victimization and reactionary disturbance and potentially cause her to follow her psychiatrist's advice and refuse to attend any more attempts of evaluation with their new advocate, upon her treating psychiatrist's express concerns (See Exhibit 4), in hopes of creating a basis for Defendants to argue Claimant has obstructed a medical evaluation and not entitled to Workmen's Compensation benefits at this time, when such benefits are intended to be given so as to provide sure, swift and certain recovery from injuries, in the interest of justice and as required by law. See Hewson v. Asker's Thrift Shop, 120 Idaho 164, 814 P.2d 424 (1991); see also Hartman v. Double L Manufacturing, Employer, and Everest National Insurance Company, Surety, Idaho Supreme Court, Docket No. 30372, filed April 6, 2005.

6. Previously, on April 27, 2005, Defendants' counsel filed a Reply to Claimant's response to Defendants' Motion to Compel Discovery Responses. In that Motion, it was seen Defendants' counsel had then complained of the fact Dr. Heyrend had elected to conduct his electroencephalogram (EEG) brain-mapping examination of Claimant on March 31, 2005. On April 6, 2005, Claimant's counsel had notified Defendants' counsel by letter of Dr. Heyrend's EEG examination and the disclosure thereof with results, opinions and conclusion. Thus, the purpose of the deposition of Dr. Heyrend would be forthcoming.

It is possible SIF's April 28, 2005 unilateral effort to evaluate Claimant by Dr. Wilson is solely for the purpose of being an advocate to address the subject matter of an EEG examination. Neither SIF, nor Mr. Bauman, have provided Claimant's counsel with any *curriculum vitae* of Dr. Wilson to suggest he is either a PTSD specialist, or has knowledge of the technology of brain mapping and EEG diagnostics, or how he might be qualified to interpret measurements or results to confirm the physical manifestations and effects upon a patient suffering from PTSD.

7. Defendants' counsel had before been provided Dr. Heyrend's *curriculum vitae* (Exhibit 5), and on page 1 of that *vitae*, Dr. Heyrend has listed professional experience as "Idaho's first and only psychiatrist offering testing and diagnostic services for brain electrical activity patterns."


On page 6 of Dr. Heyrend's *vitae*, he is identified as a professional member of the American Psychiatric Association and the Idaho Medical Association (IMA). According to the Internet Website of the Idaho Medical Association (Exhibit 6), located at <http://www.idmed.org/webpages/medical-ethics.asp>, members of the IMA, such as Dr. Heyrend, must subscribe to certain principles, including "the relief of consequences of accident and illness, and, where possible, to assure the maintenance of health and the prevention of injury and disease". Dr. Heyrend has tried to stabilize Claimant's mental and physical state, and seek the prevention of further mental and physical injury to Claimant, and has objected to Claimant's re-victimization caused by these repeated occasions with Dr. Brownsmith. On April 21, 2003 (Exhibit 2), Dr. Heyrend attempted to prevent Claimant from being re-victimized by Dr. Cynthia Brownsmith, and thereafter on March 24, 2005 (Exhibit 3),

Dr. Heyrend felt obligated to again notify Claimant's counsel "that it would not be beneficial for Stacy to have another meeting with Dr. Cynthia Brownsmith". On May 6, 2005, Dr. Heyrend has now again expressed concern (Exhibit 4) that Claimant will be injured further (re-victimized again) if Claimant is required to participate again, and Claimant has already suffered additional injury from those earlier intrusive evaluations conducted by Dr. Brownsmith, which resulted in need for Claimant to seek further medical treatment by Dr. Heyrend, with additional medications prescribed to harness the effects of the consequences from Claimant's re-victimizations and uncontrollable outbursts.

8. Defendants cannot be allowed to continue their fishing expedition to search for a medical professional(s) simply for medical advocacy purposes in behalf of Ada County and the State Insurance Fund. It would be appropriate only for Dr. Richard Wilson, M.D. to obtain Claimant's medical records, reports and evaluations from each of the Drs. Stephen E. Spencer, M.D., F. LaMarr Heyrend, M.D., Joe A. Lipetzky, Psy.D., and Cynthia Brownsmith, Ph.D., and upon review of this documentation to address thoughts on the matter without causing further injury to Claimant. If Defendants determine they need additional time to receive and distribute all medical records to Dr. Wilson, Claimant will show cooperation and voice no objection to vacating the currently scheduled Industrial Commission hearing, so Dr. Wilson, as Defendants' new medical advocate, will then have adequate time to analyze the contents of those medical records and produce his report based thereon, and Claimant will then have the opportunity to refute his review, if found to be professionally unsupported.

Claimant moves the Idaho Industrial Commission deny Defendants' current request, as originally sponsored by Jewel Own, State Insurance Fund, as this now serves only to cause substantial mental and emotional distress, and resulting physical injury and need for more intense psychotherapy and prescribed medications, and this evaluation is not being pursued in furtherance of any justice in this matter, but rather to harass and disturb a severely traumatized PTSD patient.

Dated this 6th day of May 2005.


Vernon K. Smith
Attorney for Claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 6th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho 83720-0041

(☒)

U.S. Mail

(☐)

Fax

(☐)

Hand Delivered

Jon M. Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701

(☒)

U.S. Mail

(☐)

Fax

(☐)

Hand Delivered


Vernon K. Smith



STATE INSURANCE FUND

1215 W. STATE STREET • P.O. BOX 83720 • BOISE, IDAHO 83720-0044
PHONE (208) 332-2100 • (800) 334-2370

April 28, 2005

STACY A GIBSON
C/O SMITH VERNON K ESQ
1900 W MAIN ST
BOISE ID 83702

Vendor #: 2322

RE: CLAIM NUMBER : 200110993 A /02
CLAIMANT : STACY A GIBSON
EMPLOYER : ADA COUNTY
INJURY DATE : 07/20/1999

ORIGINAL NOTIFICATION SENT TO CLAIMANT

Please be advised we have arranged for you to be seen for a medical evaluation as shown below:

WILSON RICHARD W MD
BOISE NEUROLOGICAL CONSULTANTS
999 NORTH CURTIS RD SUITE 506
BOISE ID 83706
367-2800

DATE : 5-11-05
TIME : 10:00 A.M.

Please make the necessary arrangements to keep this appointment. Failure to do so could result in termination of benefits and the responsibility for any "no show" charges incurred.

X-rays should be hand-carried to the appointment for the doctor's review.

If you have any questions, please contact this office.

Jewel Owen
Claims
208/332-2422



RECEIVED
APR 29 2005

892

F. LaMarr Heyrend, M.D.

355 N. Allumbaugh
Boise, Idaho 83704
(208) 376-2518
Fax (208) 376-2521

April 21, 2003

Vernon K. Smith
Attorney at Law
1900 W. Main Street
Boise, ID 83702
Re: Stacy Gibson

Dear Mr. Smith:


I reviewed your letter to John Bowman, attorney at law, at Elam & Burke, regarding Stacy Gibson, IC case #01-015332, and as I noticed the structure of the evaluation, I became very concerned. I felt that you articulated your position clearly, but failed to mention that PTSD is a diagnostic category, which is the result of an overwhelming stressor, which is not one that we could anticipate a person experiencing. The trauma is such that it results in behavioral changes, which with time improve. Thus, it is not a sick diagnosis.

Inasmuch as we know historically that patients improve with time, as I looked at the schedule for evaluation with Mrs. Brownsmith, I felt that this could smack of being a re-victimization. An example would be in cases of sexual abuse, sometimes the process of evaluation can become a re-victimization.

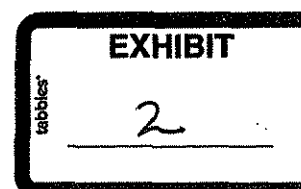
In any event, I felt it was important for me to inform you that this is something that must be considered when you have a person who is as grossly upset as this woman has been.

It is important to note that when I work with people with PTSD, I point out to them that it is the result of overwhelming stress, and is not a disorder of character or behavior, but really represents destabilization of the neural centers controlling the flow of noradrenaline and affective responsiveness. In any event, the flattening of her affect, poor affective responsiveness, guardedness, hyperreactivity, intrusive recollections, all are a result of that trauma.

Sincerely,



F. LaMarr Heyrend, M.D.
Clinical Psychiatrist



March 24 , 2005

Vernon K . Smith
1900 West Main Street
Boise, Idaho 83702

RE : Stacy A . Gibson

Dear Mr. Smith :

I am in total agreement that it would not be beneficial for Stacy to have another meeting with Dr. Cynthia Brownsmith . After her last meeting in August of 2003 (date of meeting August 27, 2003) it was quite apparent that Stacy was upset from their encounter.

Stacy has a diagnosis of Post Traumatic Stress Disorder and I have been providing her with out - patient psychiatric care and medication management since December of 2002 to present .

If Stacy needs to be examined by another psychologist it would be best if she is seen by someone who specializes in Post Traumatic Stress Disorder and has a clear understanding of this impairment .

If you are in need of any additional information regarding the above cited , please do not hesitate to contact me .

Sincerely yours,


F . La Marr Heyrend M.D.



May 6, 2005

Vernon K. Smith
1900 West Main Street
Boise, Idaho 83702

RE: Stacy A. Gibson

Dear Mr. Smith:

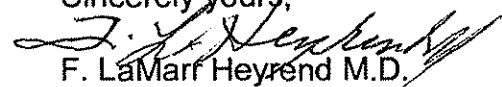
I received from your office a copy of the State Insurance Fund notice, therein advising Ms. Gibson they have scheduled her for an additional evaluation with Dr. Richard Wilson, M.D. on May 11, 2005.

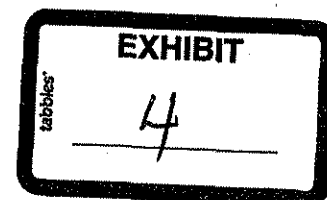
Once again, I must express my concern for the welfare of Ms. Gibson's mental, physical and emotional health, and would state that any further pursuit of Ms. Gibson by a medical advocate for Ada County or the State Insurance Fund, would not be beneficial to Ms. Gibson in any manner, and will only serve to injure her further. I am still attempting to stabilize her from the situation that arose during the April 14th evaluation conducted by Dr. Cynthia Brownsmith.

As I reviewed my progress notes of my appointments with Ms. Gibson and my letters to you of April 21, 2003 and March 24, 2005, I have very strongly articulated my medical opinion that the re-victimization of Ms. Gibson is a priority concern and needs to cease and desist, immediately. I have attached copies of those letters and progress notes for your convenient reference.

Furthermore, my specific medical opinion is to the effect any further attempts by Ada County or the State Insurance Fund to re-victimize Ms. Gibson, through the use of any medical expert (and perceived to be an advocate for the County and the State Insurance Fund), will intensify the symptomatology of Ms. Gibson's Post Traumatic Stress Disorder, and will also continue to hinder my efforts to treat Ms. Gibson with our psychotherapy sessions and medications I have prescribed for her.

Sincerely yours,


F. LaMarr Heyrend M.D.



895

Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: [REDACTED]
GENDER: Female
DATE: 04/15/05

SPECIAL CORE EVALUATION


What we have is a situation where we have to recognize that she became grossly upset when she went for her interview and evaluation with the psychologist that attorney, Mr. Baumann, arranged. She became extremely anxious and had to leave the interview. Her husband then talked to the psychologist, Cynthia Brownsmith. He pointed out that all Stacy wanted to accomplish is that the previous record be corrected. He was concerned about the fact that the record was incorrect and they just wished to bring the record into line.

I then explained several things. First, I do not look at psychological dynamics the same way I look at neurophysiology. As such, I know that panic attacks involve the locus caeruleus or red nucleus and the hippocampus. This is part of the original reptilian "fight or flight" system. Of course, the locus caeruleus is paired with the nucleus of Raphe and the two of them are in the midbrain (the center of the brain), magenta colored, and that is the autonomic nervous system (sympathetic and parasympathetic). The sympathetic is, of course, the nucleus caeruleus. Therefore, as we look at the situation, we can see that if you have to have all of the noradrenalin responses go through the nucleus of caeruleus then, in fact, having it in as tight of regulation as possible will assist in controlling panic attacks. At this particular point, I insisted that Stacy take guanabenz (because it is an alpha-agonist), going up to 4mg b.i.d., to try to balance out the locus caeruleus. This would cause her to have less anxiety. She did not wish to take more medicine but I said that plus Gabitril 4mg b.i.d. might very well handle the anxiety reaction that she is having.

I explained that if you take 100 people, only about 10% develop PTSD in traumatic experiences and these people are predisposed because the locus caeruleus is easy to downgrade. I pointed out that the guanabenz 4mg b.i.d. would help to stabilize and strengthen the locus caeruleus and would help her depression and anxiety. I suggested that Gabitril would be the next addition and that the amount of Xanax she then needs would be considerably reduced. I pointed out the fact that on her EEG, particularly her eyes open alert, her high beta activity is directly related to her anxiety and her PTSD. This has been established through the Veteran's Administration, who accept EEG computerized evaluations because it does show increased beta as one of the signs that says people have PTSD.

PLAN:

- ♦ In any event, we had a very long discussion, approximately 50 minutes. I also pointed out to John how to put together a chart that would help others to understand where I am coming from in terms of the problem.


F.L. Heyrend, M.D.
FLH/kvh (929)

896

Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: [REDACTED]
GENDER: Female
DATE: 04-04-05

EEG/EVOKED POTENTIAL REVIEW

EEG: As we go looked at Stacy's total record, we found that she frequently has increased frontal activity, frequently has standard deviations that are in excess of two frontally, frequently has dropout of the right posterior quadrant in P300s. She has extremely low voltage in her eyes open post-hyperventilation study, eyes closed resting study, and the eyes open alert study. In fact, we can safely say that in general she is running at about 25% of the μV^2 that we expect. This is often seen in affective disorders.

On the EEG, we find frontal alpha. Frontal alpha is related to a predisposition to become depressed and hyperactive to stress. Thus, as we look at her study more we recognize that she clearly is disinhibited in the right frontal quadrant. Therefore, the area in which we "put on the brakes" when you become upset is not very functional. Therefore, it is not surprising that she can really get upset, throw dishes, and so forth.

With the increased beta, which is related to anxiety, with the frontal alpha, and with the low voltages in terms of μV^2 on the EEG, we have the pattern of the person who is suffering from generalized anxiety reaction, an affective disorder, and one who manifests mood instability because of abnormal activity in the right frontal quadrant, which is the area that "puts on the brakes" when one becomes angry or upset.

EVOKED POTENTIAL: As we look at the evoked potentials, we find that the P300s, which are the imprinting waveform for the end of short-term memory, they tend to lateralize away from the right posterior quadrant towards the left and are not good from the standpoint of morphology. The latency is acceptable. That is the time that it takes for them to form. Certainly, efficient, effective imprinting is questionable because of poor morphology and the fact that they are broken up.



Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: [REDACTED]
GENDER: Female
DATE: 04-04-05

EEG/EVOKED POTENTIAL REVIEW

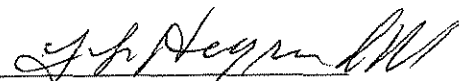
DISPOSITION/PLAN:

Therefore, we can clearly see that we have a person who is in the group of hyperfrontal people with affective disorders, anxiety disorders, and panic disorders that are susceptible development of PTSD. We all know that not everyone develops PTSD but there is a subset that do. What we find in this woman is representative of these findings. Please refer to Veteran's Administration EEG findings in PTSD.

Thus, very clearly what happens is that you have a woman who has a weak ego in that she has had a great deal of difficulty in her life in terms of becoming what she feels she should be and should become, and she finds a career as a police officer that solves these problems and gives her a good identity, and "presto", she is taken aside and told that her career is over and she is going to the penitentiary, and that she should understand what is going to happen to her. In other words, they are pointing out to her what happens to police officers in jail. To her, this was a death threat. It would simply rip her life apart. In addition, to have two of her associates put her in a room and pound on her is an unreasonable approach.

In terms of intrusive feelings from watching television, in terms of dreams, and in terms of scanning and being fearful, we can understand. In terms of the fact that she has some problems with gating and flooding of her mind because the input module to her mind is wide open, this tends to decrease the quality of cognition and increase anxiety. With high-anxiety and panic reactions already, it is very easy for her to downgrade the control of the locus caeruleus, the nucleus amygdala, and hippocampus, and the flight or fight response (which is what panic is) was brought about.

In retrospect, there is absolutely no question that she would qualify for traumatic neurosis, as defined in DSM-II and DSM-III, and she qualifies for PTSD on the basis that a life-threatening event did, in fact, occur and she felt she was about to be destroyed.


F.L. Heyrend, M.D.
FLH/kvh (752)

898

PROGRESS NOTE

Stacy Gibson

T: 10/24/03

COPY

SUBJECTIVE: Stacy comes in and we discuss the fact that Vaughn Killeen, who of course was the point of the spear that has been causing her difficulty and charging her with illegalities, and so forth, and which resulted in her PTSD, is a friend of her boss, Bernie Rakoz. What happens is that they want to put a sign "Vote for Vaughn Killeen, right out a window that she has to look at. This, I think, is a normal reaction because of the gravity of the situation which she has gone through. To move it so it is out of her line of view is certainly what one would call an act of kindness, or appropriateness, or to move it to another spot. But in any event, we simply have to recognize that this reaction is, in part, a measurement of the psychological impact of this "mess," and the fact that it does have some longitudinal effects.

The disinhibition which she is concerned about in terms of outbursts is also obvious in this situation so that we have to just simply note she has had, with this episode, some *disinhibition* of her verbal thoughts and has dumped on the people around her. This again falls within a shady area, but is not to be considered grossly abnormal.

She talked a great deal about the report Cynthia Brownsmith put together, and both she and her husband were grossly concerned with what she thought were errors and distortion of facts and they wish to have some things changed. They said that in any court record it should be preciously correct and you are always entitled to these changes. It is particularly true when her husband also knows that certain statements were not correct because he, too, experienced it. So, the likelihood of Stacy having said these things, which both of them know is not very likely.

I think that from an understanding of PTSD, and what goes on with PTSD in terms of the hippocampus megula, the locus caeruleus nucleus of her FFA, is unfortunately not being allowed to readjust and correct itself, with the help of medication and so forth, because of the fact that the assaults have continued. I do not know how to cease the revictimization process. Certainly, this whole business should be brought to closure, because the woman that I am looking at I feel very comfortable with, and certainly not a threat to herself or other people, and is certainly not of a criminal type.

I will see her again in approximately three weeks. Meds are going to stay the same except we are going to consider increasing the Gabitol and alpha II blocker.

F. L. Heyrend M.D.

F. L. HEYREND, M. D.

899

PROGRESS NOTE

Stacey Gibson

10/22/03

COPY

SUBJECTIVE: Stacey is obviously having difficulties. We had a long discussion about the fact that she is going to get better. What has been the problem is that as she starts to calm down and go back into regulation of her anxiety, she gets caught or hit with another spear. It is hard to explain what is going on and why this simply hasn't been able to resolve, but at any rate what we have is a very difficult situation where she is intermittently ending up in the barrel and speared. I do not see any reason why she should end up in the barrel and being attacked again.

She is really upset over Dr. Brownsmith saying she created information which she didn't say and, of course, I had no comment regarding this. This was also upsetting to our patient. She is going to return and see me next month. She is going to continue her Lexapro, which I think is the best medicine for her and see if this can't be worked out. I do not see why it is necessary for this to continue and let's give her a chance to stabilize.

F. L. Heyrend M.D.

F. L. HEYREND, M. D.

900

PROGRESS NOTE

Stacy Gibson

09/03/03

COPY

SUBJECTIVE: Stacy comes in and we discussed the fact that Vaughn Kalleen who of course is the point of the spear that has been causing her difficulty and accusing her with illegalities which resulted in her PTSD is a friend of her boss Bernie Rekozy and what happens is that they want to put a sign 'VOTE FOR VAUGHN KILLEEN' right out her window that she has to look at. This I think a normal reaction because of the gravity of the situation which she had gone through. To move it so that it is out of the line of view is certainly what one would call an act of kindness or appropriateness. It could be moved to another spot. But in any event we simply have to recognize that this reaction in part is a measurement of the psychological impact of this "MESS" and the fact that it does have some longitudinal effects.

The disinhibition which she is concerned about in terms of outbursts is so obvious and in this situation so we have to just simply note that she has had some disinhibition of her verbal thoughts and has dumped on the people around her which again falls within a shady area but is not to be considered grossly abnormal.

She talked a great deal about the report which Cynthia Bounds put together and what she and her husband were concerned about what she thought were errors or distortion of facts or some reversal of facts and so that they wished to have some things changed. Which I said in a court record of course it should be precisely correct and you are always entitled to these changes. It is particularly true when her husband also knows that her statements are not correct because he has experienced it and the likelihood of Stacy saying these things are not very likely.

I think that the fundamental understanding of PTSD and that which goes on in PTSD in terms of the hippocampus amygdala the locus coeruleus of the brain is unfortunately not being allowed to readjust and correct itself with the help of some medication. This is because of the fact that the assaults have continued. I do not know how to cease the revictimization process but certainly this whole business should be brought to a closure because the woman that I am looking at I feel very comfortable with and is certainly not a threat to her self or other people and is certainly not a criminal type.

I will see her again in approximately 3 weeks. Her meds are going to stay the same except that we are going to have to consider increasing the Gabitril and the alpha 2 blocker.

F. L. Heyrend, M.D.

F. L. HEYREND, M.D.

PROGRESS NOTE

Stacy Gibson

8/13/03

COPY

SUBJECTIVE: We have to focus on the 8th of July, when in her case, they had notification from the Supreme Court that there had been an error in procedure, and that the error lay on the side of the county. They got notification that this had occurred, and that they would probably have to go through the process again. They had to go back to the County Commissioner's and then to judicial review.

As we look carefully at this, it becomes patently obvious that this represented a stress. On the 8th when she was driving, she saw a county car behind her, and simply pulled over to the side. She said this was because she was feeling strange. She had a fugue state where she couldn't remember anything, and a tremendous amount of panic. This was in reaction to simply seeing a county car. Therefore, one has to attest to the fact that even though we know that in the majority of cases, PTSD does improve, and is not a sick diagnosis but a diagnosis that is related to a stimulus. One that she should not be expected to have to endure. She therefore by this reaction is still in the recovering phase, and is still in the post-traumatic stress disorder.

In seeing her today, there is no question that she has shown improvement. She still reports the times in which there is a sleep disturbance. Also, at times, in an attempt to defend herself, she will get caught up in daydreams. Along with daydreams of course, is the most severe reaction, which is a fugue state. These are psychological escape mechanisms that are designed to protect the person, because they are having intrusive recollections that are too painful.

Because of the fact that the Supreme Court took them back to ground zero, they have to start all over again after four years of problems. I am going to give her some Lexapro. An SSRI will increase her tolerance of stress, and aid her in thinking a little more clearly.

We should note that the panic attacks and waves of anxiety hadn't occurred for over a year and a half, until this occurred.

F. LaMarr Heyrend M.D.

F. LaMarr Heyrend, M.D.

FLH:sls

902

PROGRESS NOTE

Stacy Gibson

10/16/02

COPY

SUBJECTIVE: We had a long, long discussion. It would appear that her primary complaints are interference with her short-term memory, anxiety, hyperreactivity, feelings of loss of self-esteem, intrusive recollection (particularly when watching TV), and so forth. The best way to substantiate is to have a good neuropsychologist see her and test her with standardized tests, and we can tell where she is and I think this is a good idea. I suggested Dr. Eisenbeiss, which would be helpful.

It appeared that she was told that she had a responsibility to report any dramatic increases in money which she received by accident from the payroll office. She said that it was a direct deposit, and she didn't note that she had received more than she should have received. She was told she was going to the penitentiary and would be charged with fraud, etc. In any event, they relegated her to what she and her husband describe as "kind of a blubbery mass of protoplasm." This is indeed a difficult situation, and the chain of events in which she received two or three checks at once somehow will have to come out of the state records. The fact that she did not note that she had had a bonanza seems credible enough, and at this point I would say that what has happened with the extension and the argument and the threats, is that she's gone through a series of re-victimizations which has intensified the symptomatology. PTSD usually begins in about six months, and at the end of two years is improved, even in military situations. In this situation it would have been much better had it not been for the continued re-victimization.

Prior to this incident, she was making a career in law enforcement; she wanted to be a female deputy sheriff. She was performing well at her job she thought, and had had good reviews, so she was on line with her career.

In her early life, there had been no horrible traumas, and no previous history of PTSD.

Her overall health has been basically quite good, and at her age she looks very solid for her age.

Mental Status Examination:

She's obviously oriented to time, place, and person. She obviously is average IQ. She obviously is having some difficulty with her memory and she is presenting as very anxious. Her memory problem seems to be that her concentration and focus is such that she will only remember one of three objects for two to three minutes. This of course is something that has to be repeated because she is now in a situation which is anxious in that she's not used to seeing a psychiatrist. In terms of proverbs, similarities and differences, this woman obviously is thinking, and of course is not a retarded person. Her verbal abilities are what you would expect from someone who is doing well in a career in law enforcement. She has no evidence

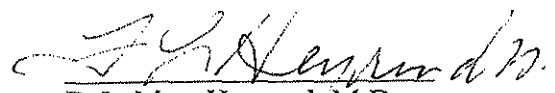
903

of a thought disorder; her concentration is borderline in that one has to repeat, if she starts to become anxious one has to repeat and hold her on focus, and then she's able to perform.

Clinical Impression:

This woman obviously is suffering from post-traumatic stress disorder. She would have done well except for a series of re-victimizations where she is beaten down, degraded, etc., and this has been very difficult for her. In order to clarify issues before I do the final DSM-IV diagnostic panel, we're going to have her have some neuropsych testing with Dr. Eisenbeiss.

I have detailed handwritten notes that describe the sequence of events and the re-victimizations.


F. LaMarr Heyrend, M.D.

FLH:sls

COPY

904

NEURO-BEHAVIORAL ASSESSMENT

Name: Stacy Ann Gibson

DOB [REDACTED]

COI 7

Identifying

Information: 44 year old female - married for 7 years to John Gibson (second marriage) Employed as Bookkeeper with Bernie R. Rakozy - Bankruptcy Trustee

Birth

History Born August 30, 1958 in Burley, Idaho 3rd and youngest child in family

Developmental

History: Attended Elementary through High School in Burley, ID Married 1st time at age 17

Medical

History: Diagnosed with asthma and allergies Diagnosed by Dr. Spencer with migraines and seasonal depression. Hysterectomy approximately 10 or 12 years ago. Removal of lump on back April and July 1999.

Allergies Grasses, trees, dust, cats, horses, Zoloft, Celexa

Head

Injury none

Past

Medications Dr. Spencer prescribed Zoloft, Celexa, Wellbutrin and Effexor for depression. Klonopin and Trazadone to calm me down. Had allergic reactions to some of anti-depressants.

905

Current

Medications None

Attachment/Bonding: Excellent relationship with husband. He is very supportive.

Family

History: Youngest of 3 children. Parents, brother and sister are all still living. I have 3 natural children (2 girls, 1 boy) and 2 step-daughters.

Social

History: Preoc to July 1999 I was outgoing and developed good rapport with co-workers. Since July 1999 want to stay away from people.

Education: Graduated Burt High School in January 1976. Attended C.S.I. for computer classes and business management for company. Took several correspondence courses provided to me by the Ada County Sheriff's Department.

Legal

History: Divorce and child custody cases (1990). Legal action against Ada County (July 1999 to present).

COPY

906

Drug and Alcohol History:

Tried marijuana briefly at age 16.
Drink a beer or glass of wine every once in a while with dinner.

Affect: Flat___ Blunted___ Pressured speech___ Flight of ideas___ Hyperv verbal___ *none*

Dysthymic___ Depressed ☒ Hypomanic___ Mood Swings___

Cognition: Delusional___ Auditory Hallucinations___ Visual Hallucinations___ *OK*

Overactive Imagination of Jung___ Tangential thinking___ Violent/Morbid thoughts___ *ng*

Obsessive thoughts ☒ Suicidal Ideation___ Homicidal Ideation___

Compulsive

Behaviors *Diagnosed with Obsessive Compulsive Disorder by Dr. Spencer*

Self mutilation *none*

Explosive

Temper *none*

Clinical

Summary: _____

S. Lori Johnson, LCSW

COPY

907

LA MARR HEYREND, M.D.
Treasure Valley Psychiatric Center
411 North Allumbaugh Boise, Idaho 83704 (208) 376-2518

EDUCATION

**M.D., School of Medicine, University of Utah, Salt Lake City,
Utah, 1954.**

Internship, Salt Lake General Hospital; LDS Hospital, Salt Lake City, Utah, 1954-55.

Residency, Pediatrics, University of Utah Medical Center, Salt Lake City, Utah,
1955-57; sub-specialty: Child Psychiatry and Neurology.

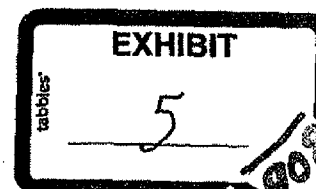
Chief Resident, Pediatrics, University of Utah Medical
Center, James Bosma, MD, Director. 1956-57.

Residency, Psychiatry, University of Utah Medical
Center, 1957 (six months) and 1962-64.

B.S., Zoology, University of Utah, 1949

PROFESSIONAL EXPERIENCE

1991-Present	Medical Director of the Residential Treatment Center at BHC Intermountain Hospital of Boise.
1990-1993	Chief of Staff, CPC Intermountain Hospital of Boise.
1988-Present	Board Member, Board of Directors, BHC Intermountain Hospital, Boise, Idaho.
1986-Present	EEG and Event Related Potential Studies, Treasure Valley Neuroscience Center Idaho's first and only psychiatrist offering testing and diagnostic services for brain electrical activity patterns. <ul style="list-style-type: none">* EEG-routine, sleep deprived* VEP-pattern reversal, (checkerboard)* VEP-flash* BAEP* Long latency AEP and P200 and P300 studies.
1980-1991	Program Director and Program Consultant, CPC Intermountain Hospital, Boise, Idaho - Directed, consulted and assisted in development of programs (i.e.: CD, Adult, Intensive Care and Adolescent at various times during this period).
1975-Present	Treasure Valley Psychiatric Center, Boise, Idaho Directs private mental health clinic, supervising the staff of professional psychologists, social workers, therapists and psychiatric nurse (RN).
1967-1974	Private practice in general psychiatry, Boise, Idaho.
1958-1969	Crippled Children's Neurological Services, State of Idaho, Department of Health - responsible for a nine county area directed from Idaho Falls, Idaho. Cared for neurologically impaired children from evaluation to treatment, diagnosis, Clinical EEG and comprehensive assessment.



F. La Marr Heyrend, M.D.

Page 2

- 1964-1967 Medical Director, Ada County Mental Health Center, Boise, Idaho - Directly responsible for all treatment programs and procedures; directed Idaho's only Methadone maintenance program; responsible for all Chemical and Substance Abuse programs; served in an administrative capacity and on the policymaking council; acknowledged and listed in the AMA's Physician directory with a sub-specialty in Administrative Psychiatry.
- 1961-1964 Fellow in Psychiatry (Resident), University of Utah School of Medicine and Medical Center - Headed mobile psychiatric clinics serving rural eastern and southern Utah; also directed cripple children's clinics for neurologically damaged and emotionally disturbed children for a six-county area of eastern Idaho: Board eligible - Psychiatry and Neurology.
- 1957-1961 Private practice in pediatrics and neurology, Idaho Falls, Idaho.
- 1956 Experience with electroencephalography, evoked potentials and electrocardiography, University of Utah, School of Medicine.
- 1955-1957 Residency in pediatrics and pediatric neurology, University of Utah. In addition to serving as Chief Resident, acted as attending physicians to Salt Lake County Juvenile Detention Center; worked as a consultant to the Pediatrics and Pediatric Neurology Division, Shriners Children's Hospital, Salt Lake City, Utah; served as Lecturer in Pediatrics, University of Utah, School of Nursing.

CONSULTING EXPERIENCE

- 1990-1992 Human Technologies, Inc., non-profit educational and medical research. Research was in the area of the physiology of behavior. Directed the establishment of a Community Mental Health Center primarily directed towards serving children.
- 1977-1982 Youth Rehabilitation Inc. (Edgemoade), Board of Directors. Assisted in program development and management of five residential treatment units throughout the country.
- 1970-1980 Edgemoade of Idaho Youth Rehabilitation, Inc. Clinical Director. Initiated treatment procedures for sixty residents, most from impoverished urban areas. Treatment concerned conduct disorders associated with substance and alcohol abuse.
- 1975-1978 Warm Springs Children's Home, Resident Treatment Program Director, Boise, Idaho. Responsible for residential treatment program, primarily in the area of adolescent treatment.
- 1970-1975 United States Public Health Service Hospitals, Duck Valley Indian Reservation, Owyhee, Nevada. Directly responsible for all mental health treatment programs, both evaluative and clinical, especially for alcoholism.
- 1964-1972 United States Air Force Hospital, Mountain Home, Idaho. In charge of mental health services and designed service delivery programs.

/909

F. La Marr Heyrend

Page 3

- 1964-1970 Job Corps Center, Residential Treatment Program Director, Mountain Home, Idaho. As consultant for OEO, was instrumental in establishing programs for two Job Corp Centers. Programs were clinically oriented to handle serious drug and alcohol programs found in over 50% of Corpsmen.
- 1964-1968 Idaho State School and Hospital for the Retarded and Neurologically Disadvantaged. Children's program consultant.

PUBLISHED PAPERS

- Bars, D.R., Heyrend, F.L., Simpson, C.D., & Munger, J.C. (2001). Use of Visual Evoked-Potential Studies and EEG Data to Classify Aggressive, Explosive Behavior of Youths. Psychiatric Services, 52(1), 81-86.
- Bars, D. R. & Heyrend, F. L. (1998). Intermittent Explosive Children from the Medical Perspective. In A. W. Vickery (Ed.), American Association of Children's Residential Centers: Contributions to Residential Treatment. (pp. 29-39). Washington D. C.: American Association of Children's Residential Centers.
- Heyrend, F. L., Bars, D. R., Simpson, C. D., Munger, J. C., Nelson, Z., & Burns, J. (1998). Pattern Reversal Visual Evoked Potentials and Explosive Behaviors. Excerpta Medica International Congress Series Volume 1162. Amsterdam: Elsevier Science B. V. (In press).

PRESENTATIONS AT SCHOLARLY MEETINGS

- Heyrend, F.L., Bars, D.R., Simpson, C.D., & Munger, J.C. (1999, Oct 29 - Nov. 2). Pattern Reversal Visual Evoked Potentials Identify Psychiatric Patients with One Type of Biologically Based Explosive Behavior. Presented at the 51st Institute on Psychiatric Services, New Orleans, Louisiana.
- Bars, D.R. & Heyrend, F.L. (1999, October 13 -16). An In-depth Look at Residential Treatment Center Clients: IQ, Academic, Learning Style, and Electrophysiological Profiles. Presented at the Annual Meeting of the American Association of Children's Residential Treatment Centers, Portland, Oregon.
- Bars, D.R., Heyrend, F.L., & Munger, J.C. (1999, September 7-11). Visual Evoked Potentials Identify Psychiatric Patients with Biologically Based Explosive Behaviors. Presented at XI International Congress of EMG and Clinical Neurophysiology, Prague, Czech Republic.
- Heyrend, F.L., Bars, D.R., Simpson, C.D., & Munger, J.C. (1999, May 15-20). Pattern Reversal Visual Evoked Potentials Identify Psychiatric Patients with One Type of Biologically Based Explosive Behavior. Presented at the American Psychiatric Association 199th Annual Meeting, Washington, D.C.
- Bars, D.R., Heyrend, F.L., Simpson, C.D., & Munger, J.C. (1998, September 10-13). Electrophysiological Indicators of Attention-Deficit/Hyperactivity Disorder and Mood Disorders. Presented at the Society for the Study of Neuronal Regulation Annual Fall Conference, Austin, Texas.
- Heyrend, F. L., Bars, D. R., Simpson, C. D., Munger, J. C., Nelson, Z., & Burns, J. (1998, March 21-25).

Pattern Reversal Visual Evoked Potentials and Explosive Behaviors. Presented at the 6th International Evoked Potential Symposium, Okazaki, Japan.

F. La Marr Heyrend, M.D.

Page 4

Bars, D. R., Heyrend, F. L., Simpson, C. D., & Munger, J. C. (1998, February 8-10). Combining QEEG and Evoked Potentials for the Classification of Various Psychiatric Behaviors: Toward Improved Differential Diagnosis. Presented at The 4th Annual Winter Conference on Brain Function/EEG, Modification & Training, Palm Springs, California.

Bars, D. R. & Heyrend, F. L. (1997, October 15-18). Intermittent Explosive Children from the Medical Standpoint. Presented at the Annual Meeting of the American Association of Children's Residential Treatment Centers, Minneapolis, Minnesota.

Bars, D. R., Heyrend, F. L., & Simpson, C. D. (1997, September 18-21). Predicting Explosive and Ruminative Behaviors with Electrophysiological Measures. Presented at the Society for the Study of Neuronal Regulation Annual Fall Conference, Aspen, Colorado.

Bars, D. R., Heyrend, F. L., & Simpson, C. D. (1997, October 15-18). Understanding Evoked Potentials. Workshop presented at the Society for the Study of Neuronal Regulation Annual Fall Conference, Aspen, Colorado.

Bars, D. R., Simpson, C. D., & Heyrend, F. L. (1996, October 16-19). Electrophysiological Contributions to Our Understanding of the ADHD Phenomenon. Presented at the Annual Meeting of the American Association of Children's Residential Treatment Centers, Albuquerque, New Mexico.

Bars, D. R., Waters, M., Barrera, L., Heyrend, F. L., Simpson, C. D., & Snow, M. (1994, October 19-23). Clinical -Use of Computer Electroencephalography and Evoked Potentials in the Treatment of Assaultive/Aggressive Adolescents in a Residential Treatment Facility. Presented at the Annual Meeting of the American Association of Children's Residential Centers, Nashville, Tennessee.

Bars, D. R., Heyrend, F. L., & Simpson, C. D. (1994, October 19-23). Differences in Brain Electrical Activity Patterns Associated with Uncontrollable Rage Attacks. Presented at the Annual Meeting of the American Association of Children's Residential Centers, Nashville, Tennessee.

Heyrend, F. L., Bums, J. B., Bars, D. R., Simpson, C. D., & Snow, M. (1992, May 2-7). Clinical Utility of Evoked Potential Studies. Workshop presented at the American Psychiatric Association Annual Meeting, Washington, DC.

Heyrend, F. L. (1992, June). Event Related Potentials and the Explosive Personality. Presented at the Alaska Psychiatric Institute, Anchorage, AK.

Bars, D. R., Heyrend, F. L. & Simpson, C. D. (1991, April). The Use of Evoked Potential Studies in the Identification of Explosive Adolescents. Presented at the American Educational Research Association Annual Meeting, Chicago, Illinois.

Heyrend, F. L. (1989, April). Dyslexia and its Diagnosis. Boder Test of Reading-Spelling Patterns. Co-presenter with Elena Boder, M.D., Boise, ID.

911

CONTINUING EDUCATION

Has attended many professional meetings, seminars, and workshops on evoked potentials. Is currently directing several on-going research projects, most notably on episodic dyscontrol syndrome, ADD and ADHD, explosive adolescents, alcohols effect on the auditory EP, and the neurophysiology of learning disabilities.

F. La Marr Heyrend

Have attended numerous professional seminars, workshops and conferences on a regular basis. The most significant recent programs completed have included the following: Bio-logic Corporation EEG and evoked potential training courses and other EEG/EP seminars, conferences in Attentional Deficit Disorder and learning disabilities, and an eighty hour professional course on alcoholism.

OTHER AWARDS AND POSITIONS OF MERIT

1978-Present	Legislative Representative, American Psychiatric Association, District Branch.
1970-1991	Member, House of Delegates, American Medical Association, Idaho Branch, 1970-91.
1969-1970	President, Idaho Psychiatric Association.

PROFESSIONAL MEMBERSHIPS

Ada County Medical Association

American Psychiatric Association

District Branch American Psychiatric Association

Idaho Medical Association

Idaho Pediatric Association (Charter Member)

Idaho Psychiatric Association (Charter Member)



Idaho Medical Association

[Home](#)[About IMA](#)[Membership](#)[Hospitals](#)[IMA Links](#)[Physician Finder](#)[Communications](#)[Brochures](#)[Members Only](#)

Medical Ethics

Principles of Medical Ethics of the Idaho Medical Association

Members of the IMA must subscribe to the Principles of Medical Ethics of the Idaho Medical Association (see IMA Bylaws Chapter III Membership, Section 3). That document is here reprinted for members in its entirety.

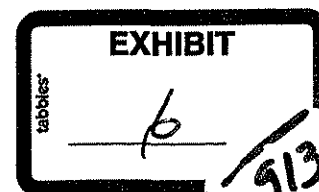
PREAMBLE

This set of statements represents the position of the Idaho Medical Association regarding the ethical duty of its member physicians. They are guidelines for conduct which define the basis for honorable behavior within the medical profession.

1. A physician's highest duty is to seek the relief of consequences of accident and illness, and, where possible, to assure the maintenance of health and the prevention of injury and disease.
2. A physician shall maintain adequate medical records to allow continuity of patient care. He should keep in confidence the statements and clinical condition of his patients, releasing such information only with the patient's consent, or if it becomes necessary in order to protect the welfare of the individual or of the community, or where otherwise required by law.
3. A physician shall demonstrate a continuing commitment to the maintenance and advancement of his professional skills.
4. A physician shall obtain consultation and assistance from other physicians or recognized medical professionals where, in his judgment, it best serves the medical needs of his patient.
5. A physician may choose to serve or not to serve as consultant to another health practitioner.
6. A physician may choose the patients whom he will serve. In an emergency, he should render service to the best of his ability. Having undertaken the care of a patient, he may not neglect him; and unless he has been discharged, he may discontinue his services only after giving adequate notice.
7. A physician shall respect the desire of his patient to participate in decisions relating to therapy. This includes informing his patients of the rationale for and probable consequences of his treatment.
8. In his representation to the public a physician shall not engage in exaggeration, distortion or misrepresentation regarding himself or his practice.
9. A physician's fee should be set fairly, based on the services rendered by him or under his supervision.
10. A physician shall safeguard the public and the profession by following these principles. Professional incompetence and unethical behavior shall be reported to the appropriate medical authorities.

JUDICIAL COMMISSION OPINIONS AND REPORTS

1. Charges for Completion of Insurance Forms:



5/2/2005

The physician should, without additional charge to the patient, complete, or provide the information necessary to complete, the standard, simplified insurance forms approved by the AMA and the Health Insurance Council, or other similar simplified health insurance forms; however, due to the proliferation of insurance claims related paper work, more complex forms required by some third party carriers and frequent requests for written reports or other evaluations, it is not unreasonable for a physician to impose a reasonable charge for this extended service to the patient. (Adopted July 1981)

2. Interest Charges and Service Charges:

Excluding charges for Medicare and/or Medicaid patients, it is not unethical for a physician to charge interest on an unpaid bill or note, or to charge a penalty on fees for professional services not paid within a prescribed period of time. The patient must be notified in advance of the existence of this practice. (Adopted July 1981)

3. Lien Against Charges for Medical Services:

It is not unethical for a physician to exercise his right to a lien pursuant to Section 45-704B, Idaho Code. (Adopted July 1981)

4. Records on Termination of Partnership or Professional Affiliation:

When a physician who is presently treating a patient requests records from another physician who has formerly treated the patient, that former physician should promptly make available to the attending physician, when properly authorized by the patient, pertinent information concerning the diagnosis and treatment of that patient. The physician need not necessarily send exact duplicates of all information contained in the clinical record, but may summarize the pertinent clinical aspects of the record, or confer directly with the attending physician.

If the amount of material to be duplicated is unusually large, or the physician is required to spend an inordinate amount of time summarizing the clinical history, dictating or otherwise utilizing his time or that of his office personnel, a reasonable fee may be charged. These anticipated charges, however, should be made known to the patient prior to performing the service.

Under no circumstances, including the disposition of a patient's bill, should a physician refuse to make available his clinical record or summary to a colleague when requested and properly authorized by the patient. (Adopted July 1981)

5. Collection of Accounts:

Before a physician refers a delinquent account to a collection agency, he should first consider the patient's ability to pay and the tactics and methods of the collection agency. The physician should not sell his delinquent accounts to a collection agency for a flat fee. (Adopted July 1981)

6. Surgical Assistant's Fee:

Each physician engaged in the care of the patient is entitled to compensation commensurate with the value of the services he has personally rendered. No physician should bill in his own name for a service which he does not perform or supervise.

Referral does not constitute a professional service for which a professional charge should be made.

When services are provided by more than one physician, each physician should submit his own bill to the patient to be compensated separately if possible. (Adopted July 1981)

7. Physician Advertising:

It shall be unethical for any physician to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice for which the physician is licensed. A "public communication" shall include, but not be limited to, communications by means of television, radio, motion picture, newspaper, book or list or directory of physicians. A false, fraudulent, misleading or deceptive statement or claim includes a statement or claim which does any of the following:

9/4

- (a) Contains a misrepresentation of facts;
- (b) Is likely to mislead or deceive because of a failure to disclose material facts;
- (c) Is intended or is likely to create false or unjustified expectations of favorable results;
- (d) Relates to fees, other than a standard consultation fee or range of fees for specific types of services, without fully disclosing all variables and other material factors;
- (e) Contains other representations or implications that in reasonable probabilities will cause an ordinarily prudent person to misunderstand or be deceived.

Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement which refers to services, or costs for such services, and which used words of comparison must be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of such comparison. Price advertising shall not be fraudulent, deceitful, or misleading. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

No physician shall compensate or give anything of value to a representative of the press, radio, television or other communications medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in such publicity. A physician may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading or deceptive as previously defined. Advertising by any physician may include but not be limited to the following:

- (a) A statement of the name of the physician, and the addresses and telephone numbers of the offices maintained by the physician.
- (b) A statement of office hours regularly maintained by the physician.
- (c) A statement of language, other than English, fluently spoken by the physician or a person in the physician's office.
- (d) A statement that the physician is board certified or eligible, or a statement that the physician limits his practice to specific fields.
- (e) A statement that the physician provides services under a specified private or public insurance plan or health care plan.
- (f) A statement of names of schools and postgraduate clinical training programs from which the physician has graduated, together with the degrees received.
- (g) A statement of publications authored by the practitioner.
- (h) A statement of teaching positions currently or formerly held by the physician, together with pertinent dates.
- (i) A statement of his or her affiliations with hospitals or clinics.
- (j) A statement of the charges or fees for services offered by the physician.
- (k) A statement that the physician regularly accepts installment payment of fees.
- (l) Otherwise lawful images of a physician, his or physical facilities, or a commodity to be advertised, but not of persons or parts of persons or facsimiles thereof for the purpose of demonstrating a medical condition, injury, disease, including obesity, or recovery or relief therefrom. (Except that eyeglasses, contact lenses, hearing aids, dentures and orthopedic devices may be advertised on the person.) (Adopted July 1982)

8. Physician Sale of Medically Related Products:

It is unethical for a physician to promote the sale of drugs, devices, appliances or goods (hereinafter "medical products") to a patient that are unnecessary and not medically indicated. If a physician offers medical products to his patients in connection with his practice, the physician must not exercise any undue influence over the patient regarding the

9/15

selection of medical products from other sources. Patients are entitled to the same freedom of choice in selecting medical products distributed by a physician as they have in the choice of a physician. (Adopted July 1983)

9. Fee Splitting and Rebates:

It is unethical for a physician to participate in fee splitting or receive or give rebates, either directly or indirectly. Consideration in the form of any kind of valuable property solely for the referral of a patient constitutes fee splitting or a rebate and is improper both for the physician paying the consideration and the physician receiving the consideration. The patient relies on the judgment of the physician in all matters of referrals, and the sole criteria of a physician in making the referral must be based on the medical skills of the person to whom the patient is referred. Laboratories that provide consideration to physicians solely based on the number of referrals are engaged in fee splitting or rebates, which is unethical. (Adopted July 1983)

10. Medical Communications:

Physicians should cooperate with the press to insure that medical news is made available more accurately than would be possible without their assistance. News of general interest to the public that falls within this category includes births, deaths, accidents and police cases. The following information is considered to be in the public domain and can be made available without the specific consent of a patient:

- (a) Patient's name, address, age.
- (b) Nature of accident: general information regarding the injuries, such as "mild," "moderate," or "severe" may be released, but there should be no discussion of the specific injury or the circumstances surrounding the accident.
- (c) Patient's condition: a general statement may be made regarding the patient using classifications of minor injuries and general diagnosis of good, fair, serious or critical. A physician shall not disclose any specific information regarding the patient without the consent of the patient. The decision of the patient regarding disclosure of specific information is controlling. (Adopted July 1983)

11. Ownership of Health Facility by Physician:

It is not unethical for a physician to own or have a financial interest in a for profit hospital, nursing home or other health facility, such as an emergency clinic, free-standing surgical center or diagnostic facility. But the physician has an ethical obligation to disclose his ownership of such a health care facility to his patients in making a referral or prior to admission or utilization. The cardinal rule is that the physician not place his or her own financial interest above the welfare of the patient under any circumstances. Financial gain should at all times be subordinate to the patient's interest. (Adopted July, 1985)

12. Capital Punishment:

As a member of a profession dedicated to preserving life, the physician should not be a participant in legally authorized execution. A physician may make a determination or certification of death as provided by law. Individual's opinion on capital punishment is a personal, moral decision of the physician, and should not be a determinant in fulfilling of one's professional role. (Adopted July 1985)

13. Abuse of Children:

Idaho law requires the reporting of suspected abuse of children, and this can be a problem for the physician who may be the object of pleadings from both offenders and victims to keep the matter confidential. Physicians should keep in mind that failure to comply with the laws requiring reporting of suspected cases of child abuse and others at risk may result in later severe abuse which may result in permanent bodily or brain injury or even death. A person who is brought to a physician with a suspicious injury is the patient whose interests require the protection of law in a particular situation, even though the physician may also provide services from time to time to parents or other members of the family. There is an ethical obligation for the physician to comply with the statutory requirements for reporting suspected

abuse. (Adopted July 1985)

14. Contingent Physician Fees:

If a physician's fee for medical service is contingent on the successful outcome of a claim, there is the ever-present danger that the physician may become less of a healer and more of an advocate. Accordingly, a physician's fee for medical services should be based on the value of the service provided by the physician to the patient and not on the uncertain outcome of a contingency that does not in any way relate to the value of the medical service. (Adopted July 1985)

15. Records of Physicians on Retirement:

A patient's records may be necessary to the patient in the future not only for medical care, but also for employment, insurance, litigation or other reason. When a physician retires or dies, patients should be notified and urged to find a new physician and should be informed that, upon authorization, records will be sent to the new physician. Records which may be of value to a patient and which are not forwarded to a new physician should be retained, either by the physician himself, another physician, or such other person lawfully permitted to act as a custodian of the records. (Adopted July 1985)

16. Drugs and Devices/Prescribing:

(a) A physician should not be influenced in the prescribing of drugs, devices or appliances by a direct or indirect financial interest in a pharmaceutical firm or other supplier. Whether the firm is a manufacturer, distributor, wholesaler or repackager of the products involved is immaterial. Reputable firms rely on quality and efficacy to sell their products under competitive circumstances and do not appeal to physicians to have financial involvements with the firm in order to influence their prescribing.

(b) A physician may own or operate a pharmacy if there is no resulting exploitation of patients.

(c) A physician should not give patients prescription in code or enter into agreement with pharmacies or other suppliers regarding the filling of prescriptions by code.

(d) Patients are entitled to the same freedom in selecting who will fill their prescription needs as they are in the choice of a physician. The prescription is a written direction for a therapeutic or corrective agent. A patient is entitled to a copy of the physician's prescription for drugs, eyeglasses, contact lenses, or other devices as required by law. The patient has the right to have the prescription filled wherever the patient wishes.

(e) Patients have a right to prompt access to the information contained in their individual medical records. The prescription is an essential part of the patient's medical record.

Physicians should not discourage patients from requesting a written prescription or urge them to fill prescriptions at an establishment which has a direct telephone line or which has entered into a business or other preferential arrangement with the physician with respect to the filling of the physician's prescription. Adopted July 1985)

17. Incentives to Limit Care:

Consistent with IMA ethical requirements of disclosure to the patient of ownership or financial interest in drugs, devices and health care facilities, the physician who has a financial incentive to limit access to care should disclose this fact to the patient before such limitation is imposed. (Adopted July 1985)

18. Sale of Donor Organs for Transplant:

It is unethical for any physician to be involved in the purchase or sale of non-renewable transplantable organs. (Adopted July 1985)

19. Withholding or Withdrawing Life-Prolonging Medical Treatment:

The social commitment of the physician is to sustain life and relieve suffering. Where the performance of one duty conflicts with the other, the choice of the patient, or his family or legal representative if the patient is incompetent to act on his own behalf, should prevail. In the absence of the patient's choice or an authorized proxy, the physician must act in the best interests of the patient.

For humane reasons, with informed consent, a physician may do what is medically

necessary to alleviate severe pain, or cease or omit treatment to permit a terminally ill patient whose death is imminent to die. However, he should not intentionally cause death. In deciding whether the administration of potentially life-prolonging medical treatment is in the best interest of the patient who is incompetent to act in his own behalf, the physician should determine what the possibility is for extending life under humane and comfortable conditions and what are the prior expressed wishes of the patient and attitudes of the family or those who have responsibility for the custody of the patient.

Even if death is not imminent but a patient's coma is beyond doubt irreversible and there are adequate safeguards to confirm the accuracy of the diagnosis, and with the concurrence of those who have responsibility for the care of the patient, it is not unethical to discontinue all means of life-prolonging medical treatment.

Life-prolonging medical treatment includes medication and artificially or technologically supplied respiration, nutrition or hydration. In treating a terminally ill or irreversibly comatose patient, the physician should determine whether the benefits of treatment outweigh its burdens. At all times, the dignity of the patient should be maintained. (Adopted July 1987)

20. Corporate Practice of Medicine:

The contractual relationships that physicians assume when they join or affiliate with group practices or agree to provide services to the patients of an insurance plan are varied. Income arrangements may include hourly wages for physicians working part time, annual salaries for those working full time, and share of group income for physicians who are partners in groups that are somewhat autonomous and contract with plans to provide the required medical care. Arrangements also usually include a range of fringe benefits, such as paid vacations, insurance, and pension plans.

Physicians may work directly for plans or may be employed by the medical group or the hospital that has contracted with the plan to provide services. In the operation of such plans, physicians should not be subjected to lay interference in professional medical matters and their primary responsibility should be to the patients they serve. (Adopted February 1998)

21. Guidelines for Expert Medical Witnesses:

1. Recommended Qualifications for the Physician Expert Witness

- a. The physician expert witness must have a current, valid, and unrestricted license to practice medicine in the state in which he or she practices.
- b. The physician expert witness shall be a diplomate of or have satisfactorily completed the certification requirements of a specialty board recognized by the American Board of Medical Specialties or the American Board of Osteopathic Specialties as well as be qualified by experience or demonstrated competence in the subject of the case. The specialty certification of that physician shall be appropriate to the subject matter of the case.
- c. The physician expert witness shall be familiar with the clinical practice of the specialty or the subject matter of the case at the time of the occurrence and shall be actively involved in the clinical practice of the specialty or the subject matter of the case for three of the previous five years at the time of the occurrence.
- d. The physician expert witness shall affirm and be prepared to document the percentage of time that is involved in serving as an expert witness.

2. Recommended Guidelines for Behavior of the Physician Expert Witness - Physicians have an obligation to testify in court as expert witnesses when appropriate. Physician expert witnesses are expected to be impartial and shall not adopt a position as an advocate or partisan in the legal proceedings.

- a. The physician expert witness shall review the medical information in the case and testify to its content fairly and impartially. The physician's review of medical facts shall be thorough, fair and impartial and shall not exclude any relevant information in order to create a view favoring either the plaintiff or the

918

defendant.

b. The physician expert witness shall review and be familiar with the standards of practice prevailing in the applicable community at the time of occurrence.

c. The physician expert witness shall be prepared to state the basis of the testimony presented and whether it is based on personal experience, specific clinical references, or generally accepted opinion in the specialty field.

Important alternate methods and views shall be fairly presented and discussed.

d. Compensation of the physician expert witness shall be reasonable and commensurate with the time and effort given to preparing for deposition and court appearance. It is unethical for a physician expert witness to link compensation to the outcome of the case.

e. The physician expert witness shall be aware that transcripts of depositions and courtroom testimony are public records, subject to independent peer review. (Adopted October 1998)

Idaho Medical Association

P.O. Box 2668 - 305 West Jefferson - Boise, ID 83701
Phone: (208) 344-7888 Fax: (208) 344-7903 mail@idmed.org

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

2005 MAY -9 P 4:41
RECEIVED
INDUSTRIAL COMMISSION

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	DEFENDANTS' RESPONSE TO
	)	CLAIMANT'S OBJECTION TO
ADA COUNTY SHERIFF'S OFFICE,	)	DEFENDANTS' EFFORTS TO
	)	SCHEDULE CLAIMANT TO FURTHER
Employer,	)	EVALUATIONS BY A [SIC] MEDICAL
	)	ADVOCATE
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

920

Defendants, by and through the law firm of Elam & Burke, P.A., their attorneys of record herein, hereby respond to Claimant's Objection to Defendants' Efforts to Schedule Claimant to Further Evaluations by a [sic] Medical Advocate ("Claimant's Objection").

By letter of April 6 from Claimant's attorney, Defendants were apprised that Claimant had undergone an electroencephalogram (EEG) by Dr. F. LaMarr Heyrend, Claimant's forensic expert and treating psychiatrist. Because of the medical issues pertaining to the administration, performance, and interpretation of EEGs, Defendants determined it would be necessary to retain the services of a neurologist. Accordingly, on April 28, 2005, a letter (Claimant's Objection, Ex. 1) was sent to Claimant's attorney notifying him that Defendants had scheduled an appointment for Claimant with Richard Wilson, M.D., a neurologist, to be held on May 11, 2005, beginning at 10:00 a.m. Dr. Wilson asserted that it is medically necessary for him to see Claimant in person.

The chief reason Defendants seek to have Claimant evaluated by Dr. Wilson is because Dr. Heyrend has chosen to perform an EEG of Claimant now, which is a recent development in the progress of this case. According to Dr. Heyrend's chart notes, Claimant has suffered "fugue states" as a consequence of her alleged industrial injury. (Claimant's Objection, Ex. 4, chart note dated 8/13/03.) A fugue state can be psychological or neurological in origin. Neurologists commonly examine patients with altered mentation. Because a fugue state can be a form of partial complex epilepsy, Claimant should undergo an evaluation by a qualified neurologist. It is also conceivable that she may require that yet another EEG be performed in order to evaluate whether the fugue states diagnosed by Dr. Heyrend are indeed evidence of an epileptic or other organic condition.

Claimant's chief objection to the evaluation of Claimant by a neurologist is that Claimant, and Dr. Heyrend, assert that she will be "revictimized" if she is evaluated by an expert retained by Defendant. Notably, Dr. Heyrend's opinion as to whether Claimant is being "revictimized" appears to depend solely on whether it is an expert hired by Defendants, or an expert hired by Claimant, who performs the evaluation. At his deposition on May 5, 2005, Dr. Heyrend testified as follows:

Q. [By Mr. Bauman] Okay. With respect to the initial history, I take it when you talk about a good history you are talking about an initial comprehensive history. Is that something that you want to have to refer back to in the course of treatment?

A. I do have it, it's in my mind.

Q. Okay. And it's not recorded anywhere, though?

A. No.

Q. All right. And would that be important for other persons who might treat Mrs. Gibson? For example, if you were to refer [her] to someone like the cognitive therapist you mentioned a minute ago, Lori Jones or Lori Johnson I believe, wouldn't she be benefitted by the history that you took from Mrs. Gibson?

A. No. She would take her own.

Q. Okay. So Mrs. Gibson would have to go back and recount all of the history again for Mrs. Johnson?

A. Yes.

(Second Deposition of LaMarr Heyrend, p. 53, l. 20 - p. 54, l. 16.) Thus it appears when

Claimant is asked to give a history and relive the events giving rise to this litigation, it only

1978

“revictimizes” her if the examining party was hired by Defendants as opposed to someone Dr. Heyrend sent her to.

Until now, Defendants have only asked Claimant to be examined by Dr. Cynthia Brownsmith, a licensed clinical psychologist. The reason Claimant had to be seen twice by Dr. Brownsmith was because of the postponement of the hearing in this matter for a period of one year based on Claimant’s attorney’s unavailability in time for the first hearing. Dr. Brownsmith, like any psychologist, needed to be updated on Claimant’s progress. Defendants seek to have Claimant evaluated by Dr. Wilson chiefly because Dr. Heyrend, an M.D., has chosen to rely on an EEG in this matter and it is necessary that a medical doctor address the issues raised by the EEG and the assertion that she has fugue states, as noted above.

Defendants respectfully submit that pursuant to Idaho Code Section 72-433, they are entitled to have Claimant evaluated by Dr. Wilson. Defendants object to Claimant’s characterization of Dr. Wilson as a “medical advocate.” There is no basis whatsoever for Claimant to so characterize Dr. Wilson, nor does Claimant substantiate this characterization by any data set forth in Claimant’s eight-page objection or the attachments thereto. Defendants respectfully submit that they will be prejudiced in the presentation of their case if they are not permitted to have a neurologist perform an appropriate examination of Claimant and of the EEG performed by Dr. Heyrend on March 31, 2005.

Defendants respectfully submit that Claimant should not be permitted to obstruct Defendants in prosecuting this case. Claimant’s allegation that seeking to have Claimant evaluated by a neurologist constitutes “medical stalking” (Claimant’s Objection, p. 4) is frivolous

and unreasonable. It is scarcely unusual in worker's compensation litigation for a Claimant to be evaluated by two experts on behalf of the defendants.

For the foregoing reasons, Defendants respectfully submit that they should be permitted to have Claimant evaluated by Dr. Richard Wilson on May 11, 2005, as scheduled.

Respectfully submitted this 9th day of May, 2005.

ELAM & BURKE, P.A.

By:

Jon M. Bauman, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 9th day of May, 2005, I caused a true and correct copy of the above and foregoing instrument to be sent by the method indicated below to:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail (postage prepaid)
☐ Hand Delivery
☐ Federal Express
☒ Facsimile Transmission
Fax: 345-1129
Phone: 345-1125

Jon M. Bauman

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

2005 MAY 10 P 3:16
RECEIVED
INDUSTRIAL COMMISSION

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	MOTION TO ENFORCE
	)	SUBPOENA DUCES TECUM
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

Defendants, by and through Elam & Burke, P.A., their attorneys of record herein, hereby
move the Industrial Commission, pursuant to Rules 7 and 16, J.R.P., to enforce the Subpoena
Duces Tecum issued by the Industrial Commission on April 28, 2005, which was duly served on

925

F. LaMarr Heyrend, M.D. A true and correct copy of said subpoena is attached hereto as Exhibit

A. The Affidavit of Service of Process of the Subpoena Duces Tecum reflects service on April 29, 2005. It was signed May 4, 2005, and filed with the Commission the following day.

Dr. Heyrend's deposition was scheduled to begin at 10:00 a.m., on Thursday, May 5, 2005. Dr. Heyrend arrived for the deposition without his chart, without any records pertaining to Claimant, and without any of the other items mentioned in the Subpoena Duces Tecum.

Eventually, and after delays during the deposition, he produced a payment ledger and a set of diagrams he created incident to the EEG. (Exhibits 1 and 2 to the May 5, 2005 deposition of Dr. Heyrend.) A true and correct copy of the referenced excerpts of Dr. Heyrend's deposition transcript is attached hereto as Exhibit B. Dr. Heyrend testified that the "probable reason" that he failed to produce the other materials was that "when his deposition was scheduled I wasn't told that that was specifically in your request." (Dr. Heyrend Deposition, p. 43, Ll. 3-17.) He was asked:

Q. [By Mr. Bauman] You didn't get the subpoena that you were served?

A. No.

Q. Well, I have an affidavit that says that you were served the subpoena?

A. It was accepted here in the office.

Q. On the 28th of April to Ron Johnson. Who is Ron Johnson?

A. That is the office manager. He is not available, hasn't been available for weeks.

Q. Okay. Well, the affidavit says he was served on April 29th at about 2:30 in the afternoon?

A. Yes.

Q. Are you saying that Mr. Johnson wasn't here on the 29th of April?

A. I'm not saying that at all. He probably received it, but since that time I don't recall seeing him.

Q. Okay. You knew the deposition was today?

A. That's right. What it is is he put it on my calendar and then he left.

Q. And you are saying he didn't provide you with a copy of the subpoena?

A. No.

Q. Is it his responsibility to provide you with that kind of document, Doctor?

A. I think it is his responsibility that he should, yes.

(Deposition of F. LaMarr Heyrend, p. 43, Ll. 18 - p. 44, L.22.)

This is not the first time Dr. Heyrend has failed to read a subpoena for his records in this matter. At his previous deposition on October 15, 2003, Dr. Heyrend testified that he did not know he could satisfy the deposition subpoena by sending defense counsel a copy of his records in advance of the deposition date. He would have known this had he read the subpoena or deposition notice from October 3, 2003 (of record herein) that had been served on his office. Therefore, on that occasion substantial resources were wasted as Claimant's counsel, defense counsel and a court reporter had to appear at Dr. Heyrend's office and sit there while a copy of Dr. Heyrend's chart was photocopied. A true and correct copy of the October 15, 2003 deposition of Dr. Heyrend is attached hereto as Exhibit C.

Dr. Heyrend should be required to produce at least his chart notes generated since October 15, 2003 and the electroencephalogram performed of Claimant on March 31, 2005, so that the same can be examined by Defendants' neurologist, Dr. Richard Wilson. The EEG and chart notes were clearly within the contemplation of the items listed in the Subpoena Duces Tecum. Claimant's counsel has not produced them. Dr. Heyrend's repeated failure to read subpoenas duly served at his office, or to properly supervise his staff to ensure that he is apprised of the contents of deposition notices and subpoenas duces tecum should not be allowed to obstruct this litigation. There is no valid reason why Dr. Heyrend should not now be required to produce the EEG, his chart notes and any other documents and materials reasonably comprehended by the April 28, 2005 Subpoena Duces Tecum on which he intends to rely to testify at the hearing in this matter, or by deposition.

Defendants respectfully submit that this subpoena should be enforced and that Dr. Heyrend should, at a minimum, be required to produce the EEG he took of Claimant and his chart notes generated since October 15, 2003.

Respectfully submitted this 10 day of May, 2005.

ELAM & BURKE, P.A.

By: 

Jon M. Bauman, of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of May, 2005, I caused the above and foregoing instrument to be served as follows:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Federal Express
☒ Via Facsimile


Jon M. Bauman

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF

THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	SUBPOENA DUCES TECUM
)	
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
_____)	

THE STATE OF IDAHO SENDS GREETINGS TO:

F. LaMarr Heyrend, M.D.
411 North Allumbaugh
Boise, Idaho 83704

WE COMMAND YOU, That all and singular business and excuses being laid aside, you appear and attend before a court reporter and notary public duly authorized to administer oaths in and for the state of Idaho at the offices of F. LaMarr Heyrend, M.D., 411 North Allumbaugh, Boise, Idaho 83704, on the 5th day of May, 2005, at 10:00 a.m., to testify at the taking of a deposition in the above-entitled action and for failure to attend, you may be deemed guilty of contempt.

You are requested to have present at the time of your testimony any and all records and/or materials in your possession pertaining in any way to Claimant in this matter, including but not limited to chart notes, medical reports, test results, printouts, electroencephalogram results, radiographic studies, descriptions of tests and procedures used, e-mails, billings, prescriptions, analyses, recordings, scrips, letters, referrals, literature on which you rely to support your opinions about and choice of procedures and tests used, specific research on which you rely to support the use of electroencephalograms and quantitative electroencephalograms in the diagnosis of psychiatric disorders.

WITNESS: Douglas A. Donohue Member of the Industrial Commission of the State of Idaho.

INDUSTRIAL COMMISSION

By: [Signature]
~~Chairman~~ Referee ~~Member~~

Attest my hand and the seal of said
Commission this 29th day of April, 2005.

Dena K. Burke
Assistant Commission Secretary



Page 41

1 there are a number of pages in the folder, 1
2 through 13 it appears, and one page called patient
3 information that is not numbered.

4 All right. Doctor, I appreciate you
5 describing those results. I realize that takes a
6 long time, and I thank you for your cooperation in
7 that regard.

8 What I would like to know now is the
9 specific scientific authority that you rely on,
10 scientific basis, research literature, that the use
11 of an EEG to diagnose psychiatric disorders, and I
12 don't mean like sleep disorders and that type of
13 thing, I mean psychiatric disorders. I would like
14 to know what specific authority you rely on, and I
15 don't mean just names of journals, I would like
16 the specific journals, dates, pages, months,
17 years, volume numbers, organization, that sort of
18 thing?

19 A. I would have to pull those off of the
20 internet, because I do not have those readily
21 available to me. What I did bring, which I
22 thought may be helpful, is that portion Military
23 Veterans PTSD Reference Manual, in which on
24 section three they talk about brain waves, brain
25 wave altering.

Page 42

1 And that may be of help to you from the
2 standpoint that in terms of people with PTSD in
3 the military that it is a useful tool, and also
4 that if you use biofeedback they have done a great
5 deal of work in terms of changing frequencies so
6 people become less anxious.

7 But what it lists here, the situations
8 in which you have people who are suffering from
9 depression, anxiety, violent explosive disorders,
10 panic attacks, low energy, sleeping problems at
11 night, and by using the EEG you have been able to
12 make some differences in terms of biofeedback.
13 You can't do biofeedback appropriately unless you
14 do your EEG and determine some of the things which
15 we determined with this young lady.

16 Q. Well, Doctor, I hate to interrupt
17 because you have responded by saying that you
18 would have to look up most of the literature on
19 the internet, but you have a printed article?

20 A. Yes, I had it printed for you.

21 Q. And this article, is that substantiated
22 by medical research? Is there a bibliography
23 attached to it with the sources they rely on?

24 A. I am sure there is in the last page,
25 and I can get that for you.

Page 43

1 Q. But it's not there?

2 A. Not here, but I can get it.

3 Q. The subpoena I have served on you asked
4 you to provide today the literature on which you
5 rely to support your opinions about your choice of
6 procedures and tests used, specific research on
7 which you rely to support the use of
8 electroencephalogram and quantitative
9 electroencephalogram in the diagnosis of
10 psychiatric disorders, and I quoted that.

11 Is there a reason that that information
12 hasn't been provided so that we can have that
13 today?

14 A. Well, yeah. The probable reason is
15 that when this was -- when this deposition was
16 scheduled I wasn't told that that was specifically
17 in your request.

18 Q. You didn't get the subpoena that you
19 were served?

20 A. No.

21 Q. Well, I have an affidavit that says
22 that you were served the subpoena?

23 A. It was accepted here in the office.

24 Q. On the 28th of April to Ron Johnson.
25 Who is Ron Johnson?

Page 44

1 A. That is the office manager. He is not
2 available, hasn't been available for weeks.

3 Q. Okay. Well, the affidavit says he was
4 served on April 29th at about 2:30 in the
5 afternoon?

6 A. Yes.

7 Q. Are you saying that Mr. Johnson wasn't
8 here on the 29th of April?

9 A. I'm not saying that at all. He
10 probably received it, but since that time I do not
11 recall seeing him.

12 Q. Okay. You knew the deposition was
13 today?

14 A. That's right. What it is is he put it
15 on my calendar and then he left.

16 Q. And you are saying he didn't provide
17 you with a copy of the subpoena?

18 A. No.

19 Q. Is it his responsibility to provide you
20 with that kind of document, Doctor?

21 A. I think it is his responsibility that
22 he should, yes.

23 Q. Are the EEG findings that you obtained
24 from Mrs. Gibson indicative of behaviors or of
25 diagnostic categories?

11 (Pages 41 to 44)

Copy

Before the Industrial Commission
of the State of Idaho

STACY A. GIBSON,

) I.C. No. 01-015332

Claimant,

vs.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.**DEPOSITION OF F. LAMARR HEYREND, M.D.**

October 15, 2003

Reported by
Patricia J. Terry, RPR
CSR No. 653

EXHIBIT C

THE REALTIME COURT REPORTERS
TUCKER
AND ASSOCIATES, LLC

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.tuckercourtreporters.com>E-Mail: tucker@tuckercourtreporters.com

c34

DEPOSITION OF F. LAMARR HEYREND, M.D.,

taken at the instance of the defendants, at the offices of Behavioral Management Center, Inc., 355 N. Allumbaugh, in the City of Boise, State of Idaho, commencing at 1:36 p.m., on October 15, 2003, before Patricia J. Terry, Certified Shorthand Reporter, Registered Professional Reporter by testing, a Notary Public in and for the State of Idaho, pursuant to notice, and in accordance with the Idaho Rules of Civil Procedure.

APPEARANCES

For Claimant by VERNON K. SMITH
 1900 W. Main Street
 Boise, Idaho 83702
 Phone: (208) 345-1125
 Fax: (208) 345-1129
 E-mail: vernonksmith@qwest.net

For Defendants ELAM & BURKE, P.A.
 by JON M. BAUMAN
 251 E. Front Street, Suite 300
 Post Office Box 1539
 Boise, Idaho 83701
 Phone: (208) 343-5454
 Fax: (208) 384-5844
 E-mail: jmb@elamburke.com

Also Appearing John Gibson

935

INDEX

<u>WITNESS</u>	<u>EXAMINATION BY</u>	<u>Page</u>
F. LaMarr Heyrend, M.D.	Mr. Bauman	1

NO EXHIBITS

Page 1

[1] BOISE, IDAHO
[2] Wednesday, October 15, 2003, 1:36 p.m.
[3]
[4] F. LAMARR HEYREND, M.D.,
[5] produced as a witness on behalf of the claimant,
[6] after having been first duly sworn, was examined
[7] and testified as follows:

[8] EXAMINATION

[9] BY MR. BAUMAN:

[10] Q: Let the record reflect this is the time
[11] and place for the deposition of the custodian of
[12] records of Behavioral Management Center, Inc., in
[13] the matter of Stacy Gibson versus Ada County
[14] Sheriff's Office and the Idaho State Insurance
[15] Fund.
[16] Fund.

[17] The record will also reflect that
[18] present in the hearing room are plaintiff's
[19] attorney Vernon K. Smith, plaintiff's husband John
[20] Gibson, the court reporter. I presume you're
[21] Dr. LaMarr Heyrend?

[22] A: Yes.
[23] Q: And I'm John Bauman representing the
[24] defendants.

[25] A: Yes, I've heard of you before.

Page 2

[1] Q: Thank you. Do you mind stating your
[2] full name for the record.
[3] A: It is Floyd, F-l-o-y-d, LaMarr, L-a
[4] capital M-a-r-r, Heyrend, H-e-y-r-e-n-d, M.D.
[5] Q: And your date of birth?
[6] A: [REDACTED]
[7] Q: How are you employed?
[8] A: I am self-employed as a psychiatrist.
[9] Q: How long have you been so employed?
[10] A: Since 1963.
[11] Q: And are you the custodian of the records
[12] of Behavioral Management Center, Inc.?
[13] A: I'm not sure that that is what I am. I
[14] think by default I'm still the custodian. They're
[15] about to be shipped away because they represent a
[16] database which belongs to another company.
[17] Q: What company is that?
[18] A: That's Neuropsych Data International of
[19] Florida.
[20] Q: Okay. The records then of Behavioral
[21] Management Center, Incorporated, are going to be
[22] shipped away to this other entity that you've
[23] identified?
[24] A: Yes.
[25] Q: When is that scheduled to occur?

Page 3

[1] A: That's scheduled to occur in the next
[2] probably four months, three or four months.
[3] Q: In the meantime, you have the file of
[4] Stacy Gibson?
[5] A: That is correct.
[6] Q: That is the complete file of
[7] Stacy Gibson that was subpoenaed by a subpoena
[8] duces tecum that was served on this office on
[9] October 6 of this year; is that correct?
[10] A: Yes, it was. Yes. That was this month
[11] of this year, yes.
[12] Q: And the records that you've maintained
[13] with respect to Stacy Gibson, are these records you
[14] maintain in the ordinary course of your business?
[15] A: Yes, they are.
[16] Q: And is it the routine practice of your
[17] business to prepare such records?
[18] A: Yes, it is.
[19] Q: And regardless of what has happened to
[20] Behavioral Management Center, Incorporated, as an
[21] entity, do you continue to maintain the records of
[22] Stacy Gibson?
[23] A: Yes, I do.
[24] Q: I understand Behavioral Management
[25] Center, Incorporated, was dissolved as a

Page 4

[1] corporation around June 5th of this year; is that
[2] right?
[3] A: That is correct.
[4] Q: Do you personally maintain these
[5] records, Dr. Gibson? I mean Dr. Heyrend. I'm
[6] sorry.
[7] A: Dr. Gibson just got promoted.
[8] Basically, the office staff that I have hired work
[9] for me, maintain the records in the record room, a
[10] secure record room here in this building.
[11] Q: And you oversee their activities?
[12] A: That is correct.
[13] Q: I take it that you were apprised by the
[14] terms of the subpoena that prior to today in lieu
[15] of this deposition you could have satisfied the
[16] deposition by delivering an affidavit of all the
[17] documents in your possession, custody, or control
[18] pertaining to Stacy Gibson to my law firm here in
[19] Boise; were you so apprised?
[20] A: No.
[21] Q: All right. Did you personally review
[22] the subpoena that was served on your office and the
[23] notice of deposition duces tecum?
[24] A: I was early this month, yes. That was
[25] put on my desk when it arrived.

Page 5

[1] Q: All right. But you didn't know that you
[2] could satisfy the deposition by producing a copy of
[3] that file in advance of today's date?

[4] A: No, I didn't understand that.

[5] Q: Do you have any objection to providing
[6] the Stacy Gibson file to me? And I'm just asking
[7] for a true and accurate copy, photocopies of the
[8] file.

[9] A: No, not at all.

[10] Q: All right. Is there any reason we
[11] shouldn't then adjourn or at least recess this
[12] deposition so that we can make a copy of your
[13] records?

[14] A: That would be fine.

[15] Q: I understand that previously we had
[16] served on you a request signed by Ms. Gibson for
[17] these records and that your office did not comply
[18] with that request. Is there some reason that we
[19] did not receive the records pursuant to that
[20] request?

[21] A: I think it's probably because I was in
[22] the process of terminating the people with
[23] Behavioral Management Center.

[24] Q: I see. Why don't I propose that we go
[25] off the record, and you can prepare a photocopy, if

Page 6

[1] you'd be so kind, of all of the records in
[2] Ms. Gibson's file. With that I would be satisfied,
[3] and then we can adjourn these proceedings.

[4] A: That would be great. I'd be happy to.

[5] You can pick what you want. Most of the file is
[6] material from your office.

[7] Q: Well, I appreciate there may be a
[8] substantial amount of material from our office. I
[9] think we sent you Dr. Brownsmith's report and some
[10] other documents.

[11] A: Yes.

[12] Q: Let's go off the record.

[13] (Recess.)

[14] MR. BAUMAN: Let the record reflect that
[15] Dr. Heyrend has given permission to use his office
[16] copier to copy the entire file of Stacy Gibson.
[17] I'd like the record to reflect that there are
[18] documents here from the law firm of Elam & Burke
[19] that we've asked to be copied among other reasons
[20] because one of them bears an orange sticky, which
[21] apparently bears the legend, "Not to release. This
[22] is released only for V.K. Smith."

[23] Let's go ahead then and recess the
[24] deposition for the time being to see that the
[25] copies are made. Thank you, Doctor. We'll be off

Page 7

[1] the record.

[2] (Recess.)

[3] MR. BAUMAN: Let the record reflect that a
[4] member of Dr. Heyrend's staff has returned with
[5] photocopies and that they appear to be copies of
[6] the file of Stacy Gibson.

[7] Q: BY MR. BAUMAN: Dr. Heyrend, did you
[8] instruct your staff to copy the complete file of
[9] Stacy Gibson?

[10] A: Yes, I did, page for page.

[11] Q: And the file has been copied?

[12] A: Yes, the file has.

[13] Q: We've sent you a release for
[14] Stacy Gibson's records. Pursuant to that release,
[15] will you continue to provide us copies with those
[16] records so we don't need to go through this drill
[17] again?

[18] A: Yes, I could if her attorney agrees.

[19] MR. SMITH: If there's any reservation, we'll
[20] let you know. And I say that not in that I
[21] represent Dr. Heyrend. Rather I'm here on behalf
[22] of Stacy Gibson as her counsel. Should she have
[23] any reservation as to the release of any
[24] documentation without first requiring a court
[25] order, I will then let you know. She's a little

Page 8

[1] bit sensitive about the issue of privacy.

[2] Q: BY MR. BAUMAN: Well, Doctor, do you
[3] feel yourself bound to follow the instructions or
[4] advice of Vernon K. Smith with respect to releasing
[5] Stacy's medical records?

[6] A: No, I have to follow her advice, because
[7] under the new HIPAA guidelines, it is a foggy area
[8] as to whether or not a patient can give you blanket
[9] permission. And I think with each new visit, why,
[10] I have to have permission from her to send it.

[11] That just becomes procedural. So that puts her in
[12] charge of that.

[13] It would seem to me that her counsel in
[14] this particular situation could probably help her
[15] understand that.

[16] Q: Have you been given any legal advice,
[17] Doctor, as to whether HIPAA even has any
[18] application in state workers' compensation
[19] proceedings?

[20] A: I took the course as was, of course,
[21] required for my CME and found that that area was
[22] not covered adequately.

[23] Q: All right. Have you obtained legal
[24] advice from any person from any attorney with
[25] respect to the application of HIPAA to state

938

[1] workers' compensation proceedings?

[2] A: No, I haven't. No, I haven't. Whom
[3] would I secure that from?

[4] Q: Well, I assume that there are lawyers in
[5] the yellow pages that you could call.

[6] A: No, I mean, that would have to be
[7] workmen's comp. Wouldn't I contact them?

[8] Q: Well, I think if you're looking for
[9] legal opinion, normally you call a lawyer.

[10] A: Okay.

[11] Q: At any rate, I appreciate your
[12] assistance. Have you withheld any records today
[13] from Stacy Gibson's file?

[14] A: No. The only records that she has is of
[15] a visit for this week that's in the dictation pool.
[16] And I will see that you get a copy of that as soon
[17] as it's done.

[18] MR. BAUMAN: I appreciate it. Thank you, I
[19] think we can go off the record now unless you have
[20] questions.

[21] MR. SMITH: I have no questions.

[22] MR. BAUMAN: Thank you. We'll be off the
[23] record.

[24] (Deposition concluded at 2:17 p.m.)

[25]

939

1	behalf 1:5; 7:21 Behavioral 1:13; 2:12, 20; 3:20, 24; 5:23 belongs 2:16 birth 2:5 bit 8:1 blanket 8:8 BOISE 1:1; 4:19 bound 8:3 Brownsmith's 6:9 building 4:10 Burke 6:18 business 3:14, 17	Doctor 6:25; 8:2, 17 documentation 7:24 documents 4:17; 6:10, 18 done 9:17 Dr 1:21; 4:5, 5, 7; 6:9, 15; 7:4, 7, 21 drill 7:16 duces 3:8; 4:23 duly 1:6	HEYREND 1:4, 21; 2:4; 4:5; 6:15; 7:7, 21 Heyrend's 7:4 HIPAA 8:7, 17, 25 hired 4:8 husband 1:19	member 7:4 mind 2:1 month 3:10; 4:24 months 3:2, 2 Most 6:5
2			I	N
15 1:2 1963 2:10 1:36 1:2			IDAHO 1:1, 15 identified 2:23 Inc 1:13; 2:12 Incorporated 2:21; 3:20, 25 instruct 7:8 instructions 8:3 Insurance 1:15 International 2:18 issue 8:1	name 2:2 need 7:16 Neuropsych 2:18 new 8:7, 9 next 3:1 normally 9:9 notice 4:23
3		E		O
2003 1:2 2:17 9:24	C	early 4:24 Elam 6:18 employed 2:7, 9 entire 6:16 entity 2:22; 3:21 even 8:17 EXAMINATION 1:9 examined 1:6	J	objection 5:5 obtained 8:23 occur 2:25; 3:1 October 1:2; 3:9 off 5:25; 6:12, 25; 9:19, 22 Office 1:15; 3:8; 4:8, 22; 5:17; 6:6, 8, 15 one 6:20 only 6:22; 9:14 opinion 9:9 orange 6:20 order 7:25 ordinary 3:14 oversee 4:11
3-30-27 2:6		F	John 1:19, 23 June 4:1	P
5	call 9:5, 9 can 5:12, 25; 6:3, 5; 8:8; 9:19 capital 2:4 Center 1:13; 2:12, 21; 3:20, 25; 5:23 charge 8:12 claimant 1:5 CME 8:21 comp 9:7 company 2:16, 17 compensation 8:18; 9:1 complete 3:6; 7:8 comply 5:17 concluded 9:24 contact 9:7 continue 3:21; 7:15 control 4:17 copied 6:19; 7:11 copier 6:16 copies 6:25; 7:5, 15 copy 5:2, 7, 12; 6:16; 7:8; 9:16 corporation 4:1 counsel 7:22; 8:13 County 1:14 course 3:14; 8:20, 20 court 1:20; 7:24 covered 8:22 custodian 1:12; 2:11, 14 custody 4:17	F 1:4 F-I-o-y-d 2:3 feel 8:3 file 3:3, 6; 5:3, 6, 8; 6:2, 5, 16; 7:6, 8, 11, 12; 9:13 fine 5:14 firm 4:18; 6:18 first 1:6; 7:24 Florida 2:19 Floyd 2:3 foggy 8:7 follow 8:3, 6 follows 1:7 found 8:21 four 3:2, 2 full 2:2 Fund 1:16	K	p.m 1:2; 9:24 page 7:10, 10 pages 9:5 particular 8:14 patient 8:8 people 5:22 permission 6:15; 8:9, 10 person 8:24 personally 4:4, 21 pertaining 4:18 photocopies 5:7; 7:5 photocopy 5:25 pick 6:5 place 1:12 plaintiff's 1:18, 19 pool 9:15 possession 4:17 practice 3:16 prepare 3:17; 5:25 present 1:18 presume 1:20 previously 5:15 prior 4:14 privacy 8:1 probably 3:2; 5:21; 8:14
6			K 1:19; 8:4 kind 6:1	
6 3:9		G	L	
A		Gibson 1:14, 20; 3:4, 7, 13, 22; 4:5, 7, 18; 5:6, 16; 6:16; 7:6, 9, 22 Gibson's 6:2; 7:14; 9:13 given 6:15; 8:16 great 6:4 guidelines 8:7	L-a 2:3 LAMARR 1:4, 21; 2:3 law 4:18; 6:18 lawyer 9:9 lawyers 9:4 least 5:11 legal 8:16, 23; 9:9 legend 6:21 lieu 4:14 little 7:25 long 2:9 looking 9:8	
accurate 5:7 activities 4:11 Ada 1:14 adequately 8:22 adjourn 5:11; 6:3 advance 5:3 advice 8:4, 6, 16, 24 affidavit 4:16 again 7:17 agrees 7:18 ahead 6:23 among 6:19 amount 6:8 apparently 6:21 appear 7:5 application 8:18, 25 appreciate 6:7; 9:11, 18 apprised 4:13, 19 area 8:7, 21 around 4:1 arrived 4:25 assistance 9:12 assume 9:4 attorney 1:19; 7:18; 8:24 away 2:15, 22	D	H	M	
	Data 2:18 database 2:16 date 2:5; 5:3 default 2:14 defendants 1:24 delivering 4:16 deposition 1:12; 4:15, 16, 23; 5:2, 12; 6:24; 9:24 desk 4:25 dictation 9:15 dissolved 3:25	H-e-y-r-e-n-d 2:4 happened 3:19 happy 6:4 heard 1:25 hearing 1:18 help 8:14	M-a-r-r 2:4 M.D 1:4; 2:4 maintain 3:14, 21; 4:4, 9 maintained 3:12 Management 1:13; 2:12, 21; 3:20, 24; 5:23 material 6:6, 8 matter 1:14 may 6:7 mean 4:5; 9:6 meantime 3:3 medical 8:5	
B				
Basically 4:8 BAUMAN 1:10, 23; 6:14; 7:3, 7; 8:2; 9:18, 22 bears 6:20, 21 becomes 8:11				

<p>procedural 8:11 proceedings 6:3; 8:19; 9:1 process 5:22 produced 1:5 producing 5:2 promoted 4:7 propose 5:24 provide 7:15 providing 5:5 psychiatrist 2:8 pursuant 5:19; 7:14 put 4:25 puts 8:11</p> <p>R</p> <p>rate 9:11 Rather 7:21 reason 5:10, 18 reasons 6:19 receive 5:19 recess 5:11; 6:13, 23; 7:2 record 1:11, 17; 2:2; 4:9, 10; 5:25; 6:12, 14, 17; 7:1, 3; 9:19, 23 records 1:13; 2:11, 20; 3:12, 13, 17, 21; 4:5, 9; 5:13, 17, 19; 6:1; 7:14, 16; 8:5; 9:12, 14 reflect 1:11, 17; 6:14, 17; 7:3 regardless 3:19 release 6:21; 7:13, 14, 23 released 6:22 releasing 8:4 report 6:9 reporter 1:20 represent 2:15; 7:21 representing 1:23 request 5:16, 18, 20 required 8:21 requiring 7:24 reservation 7:19, 23 respect 3:13; 8:4, 25 returned 7:4 review 4:21 right 4:2, 21; 5:1, 10; 8:23 room 1:18; 4:9, 10 routine 3:16</p> <p>S</p> <p>satisfied 4:15; 6:2 satisfy 5:2 scheduled 2:25; 3:1 secure 4:10; 9:3 seem 8:13 self-employed 2:8 send 8:10 sensitive 8:1</p>	<p>sent 6:9; 7:13 served 3:8; 4:22; 5:16 Sheriff's 1:15 shipped 2:15, 22 signed 5:16 situation 8:14 Smith 1:19; 6:22; 7:19; 8:4; 9:21 soon 9:16 sorry 4:6 Stacy 1:14; 3:4, 7, 13, 22; 4:18; 5:6; 6:16; 7:6, 9, 14, 22; 9:13 Stacy's 8:5 staff 4:8; 7:4, 8 State 1:15; 8:18, 25 stating 2:1 sticky 6:20 still 2:14 subpoena 3:7; 4:14, 22 subpoenaed 3:7 substantial 6:8 sure 2:13 sworn 1:6</p> <p>T</p> <p>tecum 3:8; 4:23 terminating 5:22 terms 4:14 testified 1:7 three 3:2 today 4:14; 9:12 today's 5:3 took 8:20 true 5:7</p> <p>U</p> <p>under 8:7 unless 9:19 use 6:15</p> <p>V</p> <p>V.K 6:22 Vernon 1:19; 8:4 versus 1:14 visit 8:9; 9:15</p> <p>W</p> <p>Wednesday 1:2 week 9:15 withheld 9:12 without 7:24 witness 1:5 work 4:8 workers 8:18; 9:1 workmen's 9:7</p>	<p>Y</p> <p>year 3:9, 11; 4:1 yellow 9:5</p>		
---	--	---	--	--

941

VERIFICATION

STATE OF IDAHO)
)
County of _____)

I, F. LaMarr Heyrend, M.D., being first duly sworn on my oath,
depose and say: That I am the witness named in the foregoing deposition,
taken on October 15, 2003, consisting of pages numbered 1 to 9, inclusive;

That I have read the said deposition and know the contents
thereof; that the questions contained therein were propounded to me; that
the answers to said questions were given by me, and that the answers as
contained therein (or as corrected by me therein) are true and correct.

DEPONENT

Signed and sworn before me this _____ day of
_____, 2003.

NOTARY PUBLIC

Residing at

My commission expires

Job No. 15597

942

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
County of Ada)

I, Patricia J. Terry, a Notary Public in and for the State of Idaho,
do hereby certify:


That prior to being examined, the witness named in the fore-
going deposition was by me duly sworn to testify the truth, the whole truth,
and nothing but the truth;

That said deposition was taken down by me in shorthand at
the time and place therein named and thereafter reduced to typewriting
under my direction, and that the foregoing transcript contains a full, true,
and verbatim record of the said deposition.

I further certify that I have no interest in the event of the
action.

WITNESS my hand and seal this 21st day of October,
2003.

PATRICIA J. TERRY
NOTARY PUBLIC
STATE OF IDAHO



NOTARY PUBLIC in and for the State of Idaho;
residing at Boise, Idaho.

My commission expires 08-9-2003.
CSR No. 653

943

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	IC 01-015332
)	
v.)	
)	
ADA COUNTY SHERIFF'S OFFICE,	)	ORDER ON CLAIMANT'S
	)	ATTENDANCE AT
Employer,	)	SECOND EVALUATION
)	
and)	
)	
IDAHO STATE INSURANCE FUND,	)	FILED
)	
Surety,	)	MAY 10 2005
Defendants.	)	INDUSTRIAL COMMISSION

Defendants have scheduled an examination of Claimant by neurologist Richard Wilson, M.D. Claimant objected.

Idaho Code § 72-433 requires a claimant to allow examination. Here, Claimant recently brought new potential evidence, namely, an EEG. No party should be permitted to raise new evidence and then deny the opposing party the opportunity to discover, explore, and refute such evidence.

THEREFORE, IT IS HEREBY ORDERED that Claimant shall attend and cooperate with the examination by Dr. Wilson as scheduled.

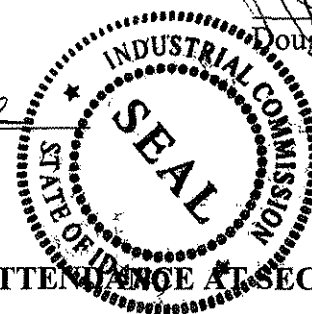
IT IS SO ORDERED.

DATED this 10th day of May, 2005.

INDUSTRIAL COMMISSION

ATTEST:

Dena K. Burke
Assistant Commission Secretary



Douglas A. Donohue
Douglas A. Donohue, Referee

ORDER ON CLAIMANT'S ATTENDANCE AT SECOND EVALUATION - 1

944

CERTIFICATE OF SERVICE

I hereby certify that on 10th day of May, 2005, a true and correct copy of the foregoing **ORDER ON CLAIMANT'S ATTENDANCE AT SECOND EVALUATION** was *Sent by Facsimile Machine Process ONLY* upon each of the following:

Vernon K. Smith Fax #: 345-1129
1900 West Main Street
Boise, ID 83702

Jon M. Bauman Fax #: 384-5844
P.O. Box 1539
Boise, ID 83701

db

Dana K. Burke

945

05/10/2005 07:10 VERNON K. SMITH → 3342321

NO. 301 002

AK

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

o0o
STACY A. GIBSON)
Claimant,)
v.)
ADA COUNTY SHERIFF'S OFFICE,)
Employer,)
and)
STATE INSURANCE FUND,)
Surety,)
Defendants.)
o0o

I.C. Case No. 01-015332

MOTION TO RECONSIDER
IDAHO INDUSTRIAL COMMISSION'S
INTERLOCUTORY ORDER
ENTERED MAY 10, 2005

RECEIVED
IDAHO INDUSTRIAL COMMISSION
2005 MAY 11 A 7 31

COMES NOW The Claimant above-named, through counsel, Vernon K. Smith, and pursuant to Rule 3F, Judicial Rules of Practice and Procedure and § 72-718, Idaho Code, does request the Idaho Industrial Commission to reconsider its Interlocutory Order entered of record on May 10, 2005, which ordered Claimant to attend and cooperate with the unwarranted and intrusive medical examination of Dr. Richard Wilson, M.D.

Claimant does request this Industrial Commission reconsider its May 10, 2005 decision and Order in accordance with the reasons, concerns and medical

MOTION TO RECONSIDER IDAHO INDUSTRIAL COMMISSION'S INTERLOCUTORY ORDER
ENTERED MAY 10, 2005 P. 1

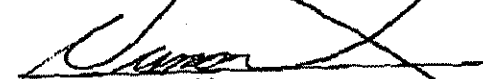
946

05/10/2005 07:10 VERNON K. SMITH → 3342321

NO. 301 003

opinion set forth in the Affidavit of Dr. F. LaMarr Heyrend, M.D., submitted in support of Claimant's objection to further unwarranted and intrusive medical evaluations, and filed contemporaneously herewith. Claimant requests a telephone hearing on this Motion.

Dated this 10th day of May 2005.


Vernon K. Smith
Attorney for Claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 10th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Mr. Jon Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701-1539

(☒) U.S. Mail
(☒) Fax
(☒) Hand-Delivered


Vernon K. Smith

MOTION TO RECONSIDER IDAHO INDUSTRIAL COMMISSION'S INTERLOCUTORY ORDER
ENTERED MAY 10, 2005 P. 2

947

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

o0o
STACY A. GIBSON)
Claimant,)
v.)
ADA COUNTY SHERIFF'S OFFICE,)
Employer,)
and)
STATE INSURANCE FUND,)
Surety,)
Defendants.)
o0o

I.C. Case No. 01-015332

AFFIDAVIT OF F. LAMARR
HEYREND, M.D. IN SUPPORT OF
CLAIMANT'S OBJECTION TO
FURTHER INTRUSIVE
MEDICAL EVALUATIONS
OF CLAIMANT

STATE OF Idaho)
COUNTY OF Ada)

COMES NOW Dr. F. LaMarr Heyrend, M.D., and being first duly sworn upon
oath, deposes and says as follows:

1. That Affiant is over the age of eighteen, a licensed physician and
practicing psychiatrist, competent to testify before a court of law, and the
statements contained herein are based upon Affiant's personal knowledge and
facts known to him personally as identified herein.

AFFIDAVIT OF F. LAMARR HEYREND, M.D. IN SUPPORT OF CLAIMANT'S OBJECTION TO
FURTHER INTRUSIVE MEDICAL EVALUATIONS OF CLAIMANT P. 1

948

05/10/2005 07:10 VERNON I MITH - 3342321

NO. 301 P05

2. That Affiant has been licensed continuously by the Idaho Board of Medicine since July 8, 1957, License No. M-2364, and Affiant does extensive practice in the field of psychiatry and therapeutic counseling.

3. That on October 16, 2002, I undertook an examination and evaluated Stacy A. Gibson (Claimant herein), as she was experiencing extreme emotional and mental disturbances, and resulting physical injuries claimed to have initially been suffered on July 20, 1999 and progressing thereafter, because of a psychological workplace injury.

4. As a result of that October 16, 2002 evaluation, Affiant determined Ms. Gibson exhibited symptoms of short-term memory loss, panic attacks, anxiety, hyperreactivity, depression, feelings of loss of self-esteem, and intrusive recollection. As I understand the history, on July 20, 1999, Ms. Gibson was interrogated by two (2) Ada County Sheriff detectives assigned to investigate an issue of mistaken overpayment of wages into the joint checking account she shared with her husband, deposited there by the Payroll Department, and being made without Ms. Gibson's knowledge. These Ada County detectives (solely and collectively) accused Ms. Gibson of several things, calling her a thief, a liar, knowingly accepting and spending County funds, and threatened her with a grand theft charge, incarceration in a jail cell and destruction of her career. It appears these detectives, and other Ada County officials assumed Ms. Gibson's involvement in these mistaken overpayments of wages, but in fact were caused solely by the Payroll Department.

949

05/10/2005 07:10 VERNON SMITH → 3342321

NO. 301 006

5. My medical opinion was Ms. Gibson was suffering from Post Traumatic Stress Disorder (PTSD), classified as constituting a "mental-physical" injury, and caused as a result of the catastrophic, abrasive, intrusive and threatening course of conduct utilized by these detectives who interrogated Ms. Gibson on July 20, 1999.

6. Since my initial examination of Ms. Gibson, I have observed Ms. Gibson become re-victimized by certain specific events that relate to Ada County's ongoing treatment and misconduct against Ms. Gibson, including various course of events that have developed in proceedings involving more intrusive examinations of her diagnosed condition.

7. I am of the medical opinion Ms. Gibson was re-victimized as a result of the compulsory orders of June 19, 2003 and April 12, 2005, as were entered by the Industrial Commission, requiring Ms. Gibson to be confronted by Dr. Cynthia Brownsmith, a psychologist, who was asked to address her condition. Ms. Gibson complied with those orders entered by the Industrial Commission, and Dr. Brownsmith conducted evaluations of Ms. Gibson on June 20, 2003, June 24, 2003, July 11, 2003, and again on April 14, 2005.

8. Because of the challenges made by Ada County and the State Insurance Fund, essentially claiming Ms. Gibson's Workmen's Compensation claim is a "mental-mental" workplace injury instead of a "mental-physical", I saw it would be beneficial to conduct an electroencephalogram (EEG) brain map diagnostic testing of Ms. Gibson, conducted in my office on March 31, 2005. The data collected from Ms. Gibson's EEG has provided an objective analysis of my original

950

05/10/2005 07:10 VERNON K SMITH → 3342321

NO. 301 007

opinion, and has confirmed my October 16, 2002 medical opinion that Ms. Gibson is suffering from a psychological workplace injury, and is a "mental-physical" injury, known as Post Traumatic Stress Disorder, and must be recognized as a compensable claim under Idaho Workmen's Compensation law.

9. During the recent re-victimization by Dr. Cynthia Brownsmith on April 14, 2005, the session Ms. Gibson was required to endure was video taped, and I have observed the unwarranted and intrusive conduct of Dr. Brownsmith as she ignored and refused to effectively reply to Ms. Gibson's questions and concerns about the need to address the multitude of inaccuracies, fabrications and misstatements found in Dr. Brownsmith's August 27, 2003 report.

10. Shortly after Ms. Gibson's explosive outburst on April 14, 2005, which concluded the discussions with Dr. Brownsmith, it was necessary for my office to examine Ms. Gibson and stabilize her from that confrontational experience. Ms. Gibson was further examined in my office on April 15, 2005, and in my effort to stabilize Ms. Gibson, following this re-victimization by Dr. Brownsmith, I prescribed Guanabenz in my effort to balance the locus caeruleus aspect of Ms. Gibson's brain, which will reduce anxiety, and structure a pathway for our continuing psychotherapy sessions. However, prescribing medications to help calm depression and anxiety does not make a patient immune to further re-victimization efforts caused by more intrusive confrontational examinations, as now proposed to take place by Dr. Richard Wilson.

11. I have been advised by Ms. Gibson's counsel, Vernon K. Smith, to the effect Ada County and the State Insurance Fund, as Defendants in the

951

05/10/2005 07:10 VERNON K SMITH → 3342321

NO. 301 008

Workmen's Compensation proceedings, are now requiring Ms. Gibson be evaluated by Dr. Richard Wilson. In my May 6, 2005 letter to Mr. Vernon K. Smith (copy attached hereto), I there emphasized my concern that any further re-victimizing evaluations of Ms. Gibson must cease, as these intrusive medical evaluations conducted by medical advocates, who are clearly perceived as such by Ms. Gibson, are causing more re-victimization, and that only continues to intensify the symptomatology of Ms. Gibson's Post Traumatic Stress Disorder, and serves only to hinder my efforts that focus on treating Ms. Gibson's condition, and causes need for prescribed medications and more psychotherapy sessions to address damage control from what is being caused by Ada County.

Ms. Gibson is of the personality type that falls in the subset of people that more easily downgrades to the "fight or flight" system found in all mammals. They are the ones in a group who more easily develop Post Traumatic Stress Disorder or traumatic neurosis.

12. It is my medical opinion is to the effect that any further advocacy by more intrusive examinations serves only to re-victimize Ms. Gibson, and that has the clear potential to cause substantial and permanent harm to her mental, emotional and physical health. It serves only to violate our medical oath in these matters. From my observations, Ms. Gibson is a person who is clearly more reactive and sensitive than the average person. In other words, she responds more sharply to verbal assaults, feels more intensely and also has decreased pain tolerance. This is a factor in placing her in the subset of people that develop Post Traumatic Stress Disorder more easily.

952

05/10/2005 07:10 VERNON WITH → 3342321

NO. 301 P09

13. At this time, and with this patient, it would be appropriate only for Dr. Richard Wilson, M.D., (or any other medical advocate selected by Ada County or the State Insurance Fund) to obtain Ms. Gibson's medical records, reports and evaluations from all physicians and examiners, including Drs. Stephen E. Spencer, M.D., Joe A. Lipetzky, Psy.D., Cynthia Brownsmith, Ph.D., and myself, F. LaMarr Heyrend, M.D., and upon review of these medical diagnosis and evaluations, may formulate his review based upon a medical record review, without need of causing further psychological trauma or permanent injury to Ms. Gibson.


14. If Ada County, the State Insurance Fund and the Idaho Industrial Commission persist in their endeavor to have Ms. Gibson examined further by Dr. Wilson, it would be unconditionally prudent and medically correct to postpone Ms. Gibson's May 11, 2005 appointment with Dr. Wilson, and eventually schedule Dr. Wilson's evaluation of Ms. Gibson only in my presence and after sufficient time to allow me to stabilize Ms. Gibson's current reaction to Dr. Brownsmith, and allow my medical supervision and care to be beneficial and keep her stabilized, and reduce the risk of what is becoming extreme permanent psychological injury to Ms. Gibson's health.

953

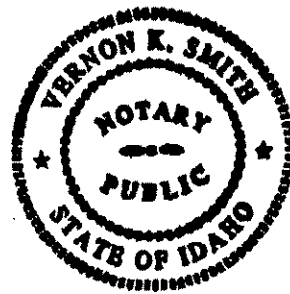
05/10/2005 07:10 VERNON SMITH → 3342321


NO. 301 P10

Dated this 10th day of May 2005.


F. LaMarr Heyrend
Licensed Psychiatrist and Claimant's
Primary Care Psychiatrist

SWORN AND SUBSCRIBED To before me this 10th day of May 2005.




Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 12/20/06

05/10/2005 07:10 VERNON K. SMITH → 3342321

NO. 301 D11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 10th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Mr. Jon Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701-1539

(☒) U.S. Mail
(☒) Fax
(☒) Hand Delivered


Vernon K. Smith

05/10/2005

07:10

VERNON SMITH → 3342321

NO. 301 012

INTERMOUNTAIN NEUROPSYCHIATRIC CENTER

May 6, 2005

Vernon K. Smith
1900 West Main Street
Boise, Idaho 83702

RE: Stacy A. Gibson

Dear Mr. Smith:

I received from your office a copy of the State Insurance Fund notice, therein advising Ms. Gibson they have scheduled her for an additional evaluation with Dr. Richard Wilson, M.D. on May 11, 2005.

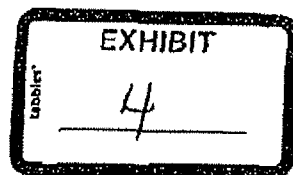
Once again, I must express my concern for the welfare of Ms. Gibson's mental, physical and emotional health, and would state that any further pursuit of Ms. Gibson by a medical advocate for Ada County or the State Insurance Fund, would not be beneficial to Ms. Gibson in any manner, and will only serve to injure her further. I am still attempting to stabilize her from the situation that arose during the April 14th evaluation conducted by Dr. Cynthia Brownsmith.

As I reviewed my progress notes of my appointments with Ms. Gibson and my letters to you of April 21, 2003 and March 24, 2005, I have very strongly articulated my medical opinion that the re-victimization of Ms. Gibson is a priority concern and needs to cease and desist, immediately. I have attached copies of those letters and progress notes for your convenient reference.

Furthermore, my specific medical opinion is to the effect any further attempts by Ada County or the State Insurance Fund to re-victimize Ms. Gibson, through the use of any medical expert (and perceived to be an advocate for the County and the State Insurance Fund), will intensify the symptomatology of Ms. Gibson's Post Traumatic Stress Disorder, and will also continue to hinder my efforts to treat Ms. Gibson with our psychotherapy sessions and medications I have prescribed for her.

Sincerely yours,


F. LaMar Heyrend M.D.



956

05/10/2005 07:10 UERNON 11TH → 3342321

NO. 301 P13

Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: 08-30-1958
GENDER: Female
DATE: 04/15/05

SPECIAL CORE EVALUATION

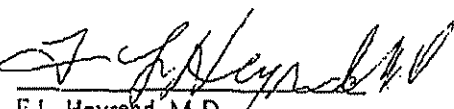
What we have is a situation where we have to recognize that she became grossly upset when she went for her interview and evaluation with the psychologist that attorney, Mr. Baumann, arranged. She became extremely anxious and had to leave the interview. Her husband then talked to the psychologist, Cynthia Brownsmith. He pointed out that all Stacy wanted to accomplish is that the previous record be corrected. He was concerned about the fact that the record was incorrect and they just wished to bring the record into line.

I then explained several things. First, I do not look at psychological dynamics the same way I look at neurophysiology. As such, I know that panic attacks involve the locus caeruleus or red nucleus and the hippocampus. This is part of the original reptilian "fight or flight" system. Of course, the locus caeruleus is paired with the nucleus of Raphe and the two of them are in the midbrain (the center of the brain), magenta colored, and that is the autonomic nervous system (sympathetic and parasympathetic). The sympathetic is, of course, the nucleus caeruleus. Therefore, as we look at the situation, we can see that if you have to have all of the noradrenalin responses go through the nucleus of caeruleus then, in fact, having it in as tight of regulation as possible will assist in controlling panic attacks. At this particular point, I insisted that Stacy take guanabenz (because it is an alpha-agonist), going up to 4mg b.i.d., to try to balance out the locus caeruleus. This would cause her to have less anxiety. She did not wish to take more medicine but I said that plus Gabitril 4mg b.i.d. might very well handle the anxiety reaction that she is having.

I explained that if you take 100 people, only about 10% develop PTSD in traumatic experiences and these people are predisposed because the locus caeruleus is easy to downgrade. I pointed out that the guanabenz 4mg b.i.d. would help to stabilize and strengthen the locus caeruleus and would help her depression and anxiety. I suggested that Gabitril would be the next addition and that the amount of Xanax she then needs would be considerably reduced. I pointed out the fact that on her EEG, particularly her eyes open alert, her high beta activity is directly related to her anxiety and her PTSD. This has been established through the Veteran's Administration, who accept EEG computerized evaluations because it does show increased beta as one of the signs that says people have PTSD.

PLAN:

- ♦ In any event, we had a very long discussion, approximately 50 minutes. I also pointed out to John how to put together a chart that would help others to understand where I am coming from in terms of the problem.


F.L. Heyrehd, M.D.
FLH/kvh (929)

957

Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: 08-30-1958
GENDER: Female
DATE: 04-04-05

EEG/EVOKED POTENTIAL REVIEW

EEG: As we go looked at Stacy's total record, we found that she frequently has increased frontal activity, frequently has standard deviations that are in excess of two frontally, frequently has dropout of the right posterior quadrant in P300s. She has extremely low voltage in her eyes open post-hyperventilation study, eyes closed resting study, and the eyes open alert study. In fact, we can safely say that in general she is running at about 25% of the μV^2 that we expect. This is often seen in affective disorders.

On the EEG, we find frontal alpha. Frontal alpha is related to a predisposition to become depressed and hyperactive to stress. Thus, as we look at her study more we recognize that she clearly is disinhibited in the right frontal quadrant. Therefore, the area in which we "put on the brakes" when you become upset is not very functional. Therefore, it is not surprising that she can really get upset, throw dishes, and so forth.

With the increased beta, which is related to anxiety, with the frontal alpha, and with the low voltages in terms of μV^2 on the EEG, we have the pattern of the person who is suffering from generalized anxiety reaction, an affective disorder, and one who manifests mood instability because of abnormal activity in the right frontal quadrant, which is the area that "puts on the brakes" when one becomes angry or upset.

EVOKED POTENTIAL: As we look at the evoked potentials, we find that the P300s, which are the imprinting waveform for the end of short-term memory, they tend to lateralize away from the right posterior quadrant towards the left and are not good from the standpoint of morphology. The latency is acceptable. That is the time that it takes for them to form. Certainly, efficient, effective imprinting is questionable because of poor morphology and the fact that they are broken up.

L. J. Heyman

05/10/2005 07:10 VERNON MITH → 3342321

NO. 301 015

Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: 08-30-1958
GENDER: Female
DATE: 04-04-05

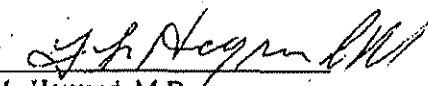
EEG/EVOKED POTENTIAL REVIEWDISPOSITION/PLAN:

Therefore, we can clearly see that we have a person who is in the group of hyperfrontal people with affective disorders, anxiety disorders, and panic disorders that are susceptible development of PTSD. We all know that not everyone develops PTSD but there is a subset that do. What we find in this woman is representative of these findings. Please refer to Veteran's Administration EEG findings in PTSD.

Thus, very clearly what happens is that you have a woman who has a weak ego in that she has had a great deal of difficulty in her life in terms of becoming what she feels she should be and should become, and she finds a career as a police officer that solves these problems and gives her a good identity, and "presto", she is taken aside and told that her career is over and she is going to the penitentiary, and that she should understand what is going to happen to her. In other words, they are pointing out to her what happens to police officers in jail. To her, this was a death threat. It would simply rip her life apart. In addition, to have two of her associates put her in a room and pound on her is an unreasonable approach.

In terms of intrusive feelings from watching television, in terms of dreams, and in terms of scanning and being fearful, we can understand. In terms of the fact that she has some problems with gating and flooding of her mind because the input module to her mind is wide open, this tends to decrease the quality of cognition and increase anxiety. With high-anxiety and panic reactions already, it is very easy for her to downgrade the control of the locus caeruleus, the nucleus amygdala, and hippocampus, and the flight or fight response (which is what panic is) was brought about.

In retrospect, there is absolutely no question that she would qualify for traumatic neurosis, as defined in DSM-II and DSM-III, and she qualifies for PTSD on the basis that a life-threatening event did, in fact, occur and she felt she was about to be destroyed.


F.L. Heyrend, M.D.
FLH/kvh (752)

959

05/10/2005 07:10 VERNON WITH → 3342321

NO. 301 016

PROGRESS NOTE

Stacy Gibson

T: 10/24/03

COPY

SUBJECTIVE: Stacy comes in and we discuss the fact that Vaughn Killeen, who of course was the point of the spear that has been causing her difficulty and charging her with illegalities, and so forth, and which resulted in her PTSD, is a friend of her boss, Bernie Rakozy. What happens is that they want to put a sign "Vote for Vaughn Killeen, right out a window that she has to look at. This, I think, is a normal reaction because of the gravity of the situation which she has gone through. To move it so it is out of her line of view is certainly what one would call an act of kindness, or appropriateness, or to move it to another spot. But in any event, we simply have to recognize that this reaction is, in part, a measurement of the psychological impact of this "mess," and the fact that it does have some longitudinal effects.

The disinhibition which she is concerned about in terms of outbursts is also obvious in this situation so that we have to just simply note she has had, with this episode, some disinhibition of her verbal thoughts and has dumped on the people around her. This again falls within a shady area, but is not to be considered grossly abnormal.

She talked a great deal about the report Cynthia Brownsmith put together, and both she and her husband were grossly concerned with what she thought were errors and distortion of facts and they wish to have some things changed. They said that in any court record it should be precisely correct and you are always entitled to these changes. It is particularly true when her husband also knows that certain statements were not correct because he, too, experienced it. So, the likelihood of Stacy having said these things, which both of them know is not very likely.

I think that from an understanding of PTSD, and what goes on with PTSD in terms of the hippocampus megula, the locus caeruleus nucleus of her FFA, is unfortunately not being allowed to readjust and correct itself, with the help of medication and so forth, because of the fact that the assaults have continued. I do not know how to cease the revictimization process. Certainly, this whole business should be brought to closure, because the woman that I am looking at I feel very comfortable with, and certainly not a threat to herself or other people, and is certainly not of a criminal type.

I will see her again in approximately three weeks. Meds are going to stay the same except we are going to consider increasing the Gabitril and alpha II blocker.

F. L. Heyrend M.D.

F. L. HEYREND, M. D.

960

05/10/2005 07:10 VERNON R. MITH → 3342321

NO. 301 017

PROGRESS NOTE
Stacey Gibson
10/22/03

COPY

SUBJECTIVE: Stacey is obviously having difficulties. We had a long discussion about the fact she is going to get better. What has been the problem is that as she starts to calm down and go back into regulation of her anxiety, she gets caught or hit with another spear. It is hard to explain what is going on and why this simply hasn't been able to resolve, but at any rate what we have is a very difficult situation where she is intermittently ending up in the barrel and speared. I do not see any reason why she should end up in the barrel and being attacked again.

She is really upset over Dr. Brownsmith saying she created information which she didn't say and, of course, I had no comment regarding this. This was also upsetting to our patient. She is going to return and see me next month. She is going to continue her Lexapro, which I think is the best medicine for her and see if this can't be worked out. I do not see why it is necessary for this to continue and let's give her a chance to stabilize.

R. L. Heyrend M.D.

R. L. HEYREND, M. D.

961

05/10/2005 07:10 VERNON MITH → 3342321

NO. 301 D18

PROGRESS NOTE

Stacy Gibson
09/03/03

COPY

SUBJECTIVE: Stacy comes in and we discussed the fact that Vaughn Kalleen who of course is the point of the spear that has been causing her difficulty and accusing her with illegalities which resulted in her PTSD is a friend of her boss Bernie Rekozy and what happens is that they want to put a sign 'VOTE FOR VAUGHN KILLEEN' right out her window that she has to look at. This I think a normal reaction because of the gravity of the situation which she had gone through. To move it so that it is out of the line of view is certainly what one would call an act of kindness or appropriateness. It could be moved to another spot. But in any event we simply have to recognize that this reaction in part is a measurement of the psychological impact of this "MESS" and the fact that it does have some longitudinal effects.

The disinhibition which she is concerned about in terms of outbursts is so obvious and in this situation so we have to just simply note that she has had some disinhibition of her verbal thoughts and has dumped on the people around her which again falls within a shady area but is not to be considered grossly abnormal.

She talked a great deal about the report which Cynthia Bounds put together and what she and her husband were concerned about what she thought were errors or distortion of facts or some reversal of facts and so that they wished to have some things changed. Which I said in a court record of course it should be precisely correct and you are always entitled to these changes. It is particularly true when her husband also knows that her statements are not correct because he too experienced it and the likelihood of Stacy saying these things are not very likely.

I think that the fundamental understanding of PTSD and that which goes on in PTSD in terms of the hippocampus amygdala the locus coeruleus of the brain is unfortunately not being allowed to readjust and correct itself with the help of some medication. This is because of the fact that the assaults have continued. I do not know how to cease the revictimization process but certainly this whole business should be brought to a closure because the woman that I am looking at I feel very comfortable with and is certainly not a threat to her self or other people and is certainly not a criminal type.

I will see her again in approximately 3 weeks. Her meds are going to stay the same except that we are going to have to consider increasing the Gabitril and the alpha 2 blocker.

F. L. Heyrend, M.D.

F. L. HEYREND, M.D.

962

05/10/2005 07:10 VERNON MITH → 3342321

NO. 301 019

PROGRESS NOTE

Stacy Gibson

8/13/03

COPY

SUBJECTIVE: We have to focus on the 8th of July, when in her case, they had notification from the Supreme Court that there had been an error in procedure, and that the error lay on the side of the county. They got notification that this had occurred, and that they would probably have to go through the process again. They had to go back to the County Commissioner's and then to judicial review.

As we look carefully at this, it becomes patently obvious that this represented a stress. On the 8th when she was driving, she saw a county car behind her, and simply pulled over to the side. She said this was because she was feeling strange. She had a fugue state where she couldn't remember anything, and a tremendous amount of panic. This was in reaction to simply seeing a county car. Therefore, one has to attest to the fact that even though we know that in the majority of cases, PTSD does improve, and is not a sick diagnosis but a diagnosis that is related to a stimulus. One that she should not be expected to have to endure. She therefore by this reaction is still in the recovering phase, and is still in the post-traumatic stress disorder.

In seeing her today, there is no question that she has shown improvement. She still reports the times in which there is a sleep disturbance. Also, at times, in an attempt to defend herself, she will get caught up in daydreams. Along with daydreams of course, is the most severe reaction, which is a fugue state. These are psychological escape mechanisms that are designed to protect the person, because they are having intrusive recollections that are too painful.

Because of the fact that the Supreme Court took them back to ground zero, they have to start all over again after four years of problems. I am going to give her some Lexapro. An SSRI will increase her tolerance of stress, and aid her in thinking a little more clearly.

We should note that the panic attacks and waves of anxiety hadn't occurred for over a year and a half, until this occurred.

F. LaMarr Heyrend M.D.

F. LaMarr Heyrend, M.D.

FLH:sls

963

PROGRESS NOTE

Stacy Gibson

10/16/02

COPY

SUBJECTIVE: We had a long, long discussion. It would appear that her primary complaints are interference with her short-term memory, anxiety, hyperreactivity, feelings of loss of self-esteem, intrusive recollection (particularly when watching TV), and so forth. The best way to substantiate is to have a good neuropsychologist see her and test her with standardized tests, and we can tell where she is and I think this is a good idea. I suggested Dr. Eisenbeiss, which would be helpful.

It appeared that she was told that she had a responsibility to report any dramatic increases in money which she received by accident from the payroll office. She said that it was a direct deposit, and she didn't note that she had received more than she should have received. She was told she was going to the penitentiary and would be charged with fraud, etc. In any event, they relegated her to what she and her husband describe as "kind of a blubbery mass of protoplasm." This is indeed a difficult situation, and the chain of events in which she received two or three checks at once somehow will have to come out of the state records. The fact that she did not note that she had had a bonanza seems credible enough, and at this point I would say that what has happened with the extension and the argument and the threats, is that she's gone through a series of re-victimizations which has intensified the symptomatology. PTSD usually begins in about six months, and at the end of two years is improved, even in military situations. In this situation it would have been much better had it not been for the continued re-victimization.

Prior to this incident, she was making a career in law enforcement; she wanted to be a female deputy sheriff. She was performing well at her job she thought, and had had good reviews, so she was on line with her career.

In her early life, there had been no horrible traumas, and no previous history of PTSD.

Her overall health has been basically quite good, and at her age she looks very solid for her age.

Mental Status Examination:

She's obviously oriented to time, place, and person. She obviously is average IQ. She obviously is having some difficulty with her memory and she is presenting as very anxious. Her memory problem seems to be that her concentration and focus is such that she will only remember one of three objects for two to three minutes. This of course is something that has to be repeated because she is now in a situation which is anxious in that she's not used to seeing a psychiatrist. In terms of proverbs, similarities and differences, this woman obviously is thinking, and of course is not a retarded person. Her verbal abilities are what you would expect from someone who is doing well in a career in law enforcement. She has no evidence

964

05/10/2005 07:10 VERNON SMITH → 3342321

NO. 301 021

of a thought disorder; her concentration is borderline in that one has to repeat, if she starts to become anxious one has to repeat and hold her on focus, and then she's able to perform.

Clinical Impression:

This woman obviously is suffering from post-traumatic stress disorder. She would have done well except for a series of re-victimizations where she is beaten down, degraded, etc., and this has been very difficult for her. In order to clarify issues before I do the final DSM-IV diagnostic panel, we're going to have her have some neuropsych testing with Dr. Eisenbeiss.

I have detailed handwritten notes that describe the sequence of events and the re-victimizations.


P. LaMarr Heyrend, M.D.

FLH:sls

COPY

965

05/10/2005 07:10 VERNON SMITH → 3342321

NO. 301 P22

NEURO-BEHAVIORAL ASSESSMENT

Name: Stacy Ann Gibson

DOB: [REDACTED]

CC

Identifying

Information: 44 year old female - married for 7 years to John Gibson (second marriage) Employed as Bookkeeper with Bernie R. Rattery - Bankruptcy Trustee

Birth

History Born August 30, 1958 in Burley, Idaho 3rd and youngest child in family

Developmental

History: Attended Elementary through High School in Burley, ID Married 1st time at age 17

Medical

History: Diagnosed with asthma and allergies Diagnosed by Dr. Spencer with migraines and seasonal depression. Hysterectomy approximately 10 or 12 years ago. Removal of lump on back April and July 1999

Allergies Grasses, trees, dust, cats, horses, Zolof, Celexa

Head

Injury none

Past

Medications Dr. Spencer prescribed Zolof, Celexa, Wellbutrin and Effexor for depression. Klonopin and Trazadone to calm me down. Had allergic reactions to some of anti-depressants.

05/10/2005 07:10 VERNON MITH → 3342321

NO.301 P23

Current

Medications None

Attachment/Bonding: Excellent relationship with husband. He is very supportive.

Family

History: Youngest of 3 children Parents, brother and sister are all still living. I have 3 natural children (2 girls, 1 boy) and 2 step-daughters.

Social

History: Prior to July 1999 I was outgoing and developed good rapport with co-workers. Since July 1999 want to stay away from people

Education: Graduated Burke High School in January 1976. Attended C.S.I. for computer classes and business management for company. Took several correspondence courses provided to me by the Ada County Sheriff's Department.

Legal

History: Divorce and child custody cases (1990) Legal action against Ada County (July 1999 to present)

COPY

967

05/10/2005 07:10 VERNON WITH → 3342321

NO.301 024

Drug and Alcohol History:

Tried marijuana briefly at age 16
Drank a beer or glass of wine every once in a
while with dinner

Affect: Flat___ Blunted___ Pressured speech___ Flight of ideas___ Hyperv verbal___ *none*

Dysthymic___ Depressed ☒ Hypomanic___ Mood Swings___

Cognition: Delusional___ Auditory Hallucinations___ Visual Hallucinations___ *OK*

Overactive Imagination of Jung___ Tangential thinking___ Violent/Morbid thoughts___ *ng*

Obsessive thoughts ☒ Suicidal Ideation___ Homicidal Ideation___

Compulsive

Behaviors *Diagnosed with Obsessive Compulsive Disorder
by Dr. Spencer*

Self mutilation *none*

Explosive

Temper *none*

Clinical

Summary:

S. Lori Johnson, LCSW

COPY

968

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

o0o
STACY A. GIBSON)
Claimant,)
v.)
ADA COUNTY SHERIFF'S OFFICE,)
Employer,)
and)
STATE INSURANCE FUND,)
Surety,)
Defendants.)
o0o

I.C. Case No. 01-015332

FURTHER MEMORANDUM
IN SUPPORT OF CLAIMANT'S
MOTION TO RECONSIDER
IDAHO INDUSTRIAL COMMISSION'S
INTERLOCUTORY ORDER
ENTERED MAY 10, 2005

RECEIVED
IDAHO INDUSTRIAL COMMISSION
MAY 11 P 4:29

On May 10, 2005, Claimant filed with the Idaho Industrial Commission her Motion requesting the Commission reconsider its order entered May 10, 2005, which therein required Claimant to submit to an examination conducted by Dr. Richard Wilson, M.D. on May 11, 2005. In support of Claimant's Motion, an Affidavit was presented by her primary care psychiatrist, Dr. F. LaMarr Heyrend, M.D., therein verifying his medical opinion she is suffering significantly from the Post Traumatic Stress Disorder (PTSD) caused by the County, and this condition is classified as constituting a "mental-physical" workplace injury; that Dr. Heyrend has

969

05/11/2005 04:22 VERNON K WITH → 3342321

NO. 303 P03

verified Claimant's extreme PTSD condition with an electroencephalogram (EEG) brain mapping diagnostic testing process he conducted on March 31, 2005; that Dr. Heyrend's medical opinion is Claimant is being re-victimized each time she is manipulated or evaluated under the efforts of Dr. Cynthia Brownsmith, as was the result from the confrontational episodes on June 20, 2003, June 24, 2003, July 11, 2003, and especially on April 14, 2005; that because of Claimant's re-victimization, Dr. Heyrend was required to prescribe Guanabenz to Claimant on April 15, 2005, in an effort to balance the locus caeruleus aspect of her brain, which, with time, will serve to reduce Claimant's anxiety, and structure a pathway for his future psychotherapy sessions; that until such time Dr. Heyrend is able to provide his further medical opinion that Claimant is sufficiently stabilized and capable of participating in any further adversarial medical evaluations and examinations (which must be conducted in the presence of Dr. Heyrend), he believes Claimant would be contradicting the medical opinion and advice he has given her, as her primary care psychiatrist, and she should not make herself available for any further confrontations by advocates of Ada County or the State Insurance Fund until such approval is submitted by Dr. Heyrend; that Dr. Heyrend is also of the medical opinion if Claimant were to be subjected to any more of these intrusive and unwarranted examinations, there is the potential risk of causing Claimant further psychological trauma and permanent psychological injury.

Claimant is aware she can be evaluated by an expert chosen by Ada County and the State Insurance Fund, pursuant to § 72-433, Idaho Code, and if she unreasonably fails to submit to an examination requested by Defendants, any

05/11/2005 04:22 VERNON R. WITH → 3342321

NO. 303 004

proceedings under the Workmen's Compensation law, may be suspended until her failure ceases. But more importantly, and to the contrary, Claimant is also aware, pursuant to § 72-435, Idaho Code, that the Industrial Commission may order the suspension of proceedings if Claimant participates in any unreasonable and injurious practices which tend to imperil or retard her medical recovery. It has simply degraded into a proverbial "Catch 22" situation or a "Pandora's Box" conundrum.. At this time, for Claimant to participate in any further evaluations or examinations is not only unreasonable to her health, but would be exposing her to permanent damage, and violate the advice and healing effects of her therapist.

As stated above, and as provided in the Affidavit of Dr. F. LaMarr Heyrend, M.D., at this time, and with this patient (Claimant), any attempts by Ada County or the State Insurance Fund, through the instrumentality of the Idaho Industrial Commission, to compel Claimant to be further evaluated or further examined by an advocate, will prove to be injurious to the mental and physical health of Claimant and does violate her therapist's healing efforts and oath of practice.

The last two unreasonable and unilateral attempts of Defendants, requiring Claimant's attendance for the examinations and evaluations requested by Defendants, have not been accommodating to the Claimant, as required by Idaho law and to the contrary, were injurious to her health. In his letter dated April 6, 2005, and without providing Claimant any professional courtesy, Defendants' counsel, Mr. Jon Bauman, unilaterally undertook to schedule Claimant for evaluation by Dr. Brownsmith, without accommodating any other schedule, and

05/11/2005 04:22 VERNON K. WITH → 3342321

NO. 303 P05

preventing any treating therapist's attendance as is allowed by § 72-433 (2), Idaho Code, and was to be allowed by the Commission's order.

In a similar fashion, Defendants again, and unilaterally, without sufficient notice, sought to require Claimant to submit to further medical evaluation by Dr. Richard Wilson on May 11, 2005, scheduled by Jewel Owen, State Insurance Fund, on April 28, 2005. This request was also unaccommodating to Claimant, also preventing the attendance of Claimant's primary care psychiatrist, pursuant to § 72-433 (2), Idaho Code.

These unilateral schedulings are viewed as being in contradiction of Idaho law, as all Industrial Commission proceedings are to be simple, accommodating to claimants, and above all are to seek justice. See Hartman v. Double L Manufacturing, Employer, and Everest National Insurance Company, Surety, Idaho Supreme Court, Docket No. 30372, filed April 6, 2005; Hagler v. Micron Technology, Inc., 118 Idaho 586, 798 P.2d 55 (1990). See also Claimant's Objection filed May 6, 2005.

Defendants well know Claimant has never unreasonably failed to submit to any justified examination by a physician or surgeon which has been designated by Defendants or the Commission, but now her doctor's advice must have the final determination. What Claimant has done, and in a sound and reasonable manner, is to object to being injured again, and will not submit to examinations or evaluations that are currently and potentially injurious to her mental, emotional and physical health, and without having the presence and assurance of her primary

972

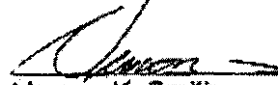
05/11/2005 04:22 VERNON SMITH → 3342321

NO. 303 006

care psychiatrist during any more evaluations, if it is not conducted solely by file-document review.

Claimant does request this Industrial Commission reconsider its May 10, 2005 decision and Order in accordance with the reasons, concerns and medical opinion set forth in this Memorandum and in the Affidavit of Dr. F. LaMarr Heyrend, M.D., as was submitted in support of Claimant's Motion to Reconsider, submitted May 10, 2005.

Dated this 11th day of May 2005.


Vernon K. Smith
Attorney for Claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 11th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Mr. Jon Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701-1539

(X) U.S. Mail
(X) Fax
(X) Hand Delivered


Vernon K. Smith

973

Ryan P. Armbruster
 Jon M. Bauman
 ELAM & BURKE, P.A.
 251 East Front Street, Suite 300
 P.O. Box 1539
 Boise, Idaho 83701-1539
 Telephone: (208) 343-5454
 Facsimile: (208) 384-5844
 Armbruster - ISB #1878
 Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF
 THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	LC. No. 01-015332
)	
v.	)	RESPONSE TO CLAIMANT'S MOTION
	)	FOR RECONSIDERATION
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	

FILED
 MAY 11 2005
 INDUSTRIAL COMMISSION

Defendants, by and through the law firm of Elam & Burke, P.A., their attorneys of record herein, hereby respond to Claimant's Motion for Reconsideration of the Referee's Order of May 10, 2005, requiring Claimant to appear as scheduled for evaluation by Dr. Richard Wilson.

RESPONSE TO CLAIMANT'S MOTION FOR RECONSIDERATION - 1

G:\SHARED\01790901\LEADING5\case\002-0002\klm\lil.wpd

274

The Industrial Commission's rules do not countenance a motion for reconsideration.

Claimant has been ordered to attend and, is required to attend the evaluation by Dr. Wilson.

Defendants have set forth cogent reasons why Claimant should be evaluated by Dr.

Wilson. Dr. Wilson, a neurologist, should evaluate Claimant given Dr. Heyrend's diagnosis that Claimant has suffered from "fugue" states. As Dr. Wilson has pointed out, a fugue state may be an indication of complex partial epilepsy. In that event, Claimant should definitely be evaluated by a neurologist and, if necessary, an additional EEG should be performed and read by an appropriate medical expert, namely, a neurologist.

Claimant has repeatedly attempted to obstruct Defendants in obtaining appropriate evidence in this case. Dr. Wilson should not be limited in his ability to perform a meaningful appraisal of the evidence in this case by being denied access to Claimant on the grounds that she suffers from "revictimization" for post-traumatic stress disorder – a diagnosis which Claimant's own expert, Dr. Lipetzky, believes to be erroneous and which Dr. Brownsmith, Defendants' expert also believes to be erroneous.

Defendants respectfully submit that Claimant should be required to attend the evaluation by Dr. Wilson. For reasons of time, and because of the late appearance of this Motion to Reconsider, Defendants have not had the opportunity to obtain an affidavit from Dr. Wilson. However, such an affidavit can be supplied in order to substantiate the need for him to evaluate Claimant. Nevertheless, defense counsel represents to the Industrial Commission and to opposing counsel that Dr. Wilson has asserted it is necessary for him to evaluate Claimant in person, based at least in part on Dr. Heyrend's own diagnosis of fugue states, as well as because

Dr. Wilson, as a conscientious physician, should not be rendering an opinion about the medical condition of an individual without having personally physically examined that individual. Again, if the Industrial Commission so requires, Defendants will provide an affidavit of Dr. Wilson.

Respectfully submitted this 11th day of May, 2005.

ELAM & BURKE P.A.

By: 

Jon M. Bauman, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 11th day of May, 2005, I caused a true and correct copy of the above and foregoing instrument to be sent by the method indicated below to:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail (postage prepaid)
☐ Hand Delivery
☐ Federal Express
☒ Facsimile Transmission
Fax: 345-1129
Phone: 345-1125


Jon M. Bauman

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	IC 01-015332
)	
v.)	
)	
ADA COUNTY SHERIFF'S OFFICE,	)	ORDER ON CLAIMANT'S
	)	MOTION TO RECONSIDER
Employer,)	
)	
and)	
)	
IDAHO STATE INSURANCE FUND,	)	FILED
)	
	)	MAY 11 2005
Surety,)	
Defendants.	)	INDUSTRIAL COMMISSION

Defendants have scheduled an examination of Claimant by neurologist Richard Wilson, M.D. Claimant objected. On May 10, 2005, the Referee ordered Claimant to attend and cooperate with the examination scheduled for May 11, 2005.

On May 10, 2005, at 7:15 p.m., Claimant filed a motion for reconsideration. At 9:07 p.m., Defendants' responded.

Idaho Code § 72-718 provides a mechanism allowing reconsideration by the Industrial Commission of final decisions appealable to the Idaho Supreme Court. The title of Claimant's motion for reconsideration correctly identifies the Referee's May 10, 2005, order as an interlocutory order. As such, it is neither a final decision of the Industrial Commission nor appealable. Neither Idaho Code § 72-718 nor any other applicable statute or rule allows the filing of a motion for reconsideration of the Referee's May 10, 2005, order. Claimant's motion for reconsideration is denied.

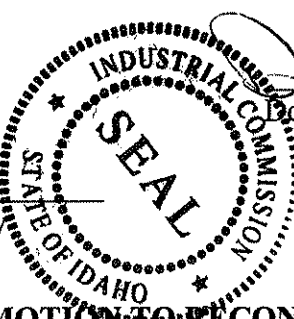
IT IS SO ORDERED.

DATED this 11th day of May, 2005.

INDUSTRIAL COMMISSION

ATTEST:

Dona K. Burke
Assistant Commission Secretary



Douglas A. Donohue, Referee

ORDER ON CLAIMANT'S MOTION TO RECONSIDER - 1

977

CERTIFICATE OF SERVICE

I hereby certify that on 11th day of May, 2005, a true and correct copy of the foregoing **ORDER ON CLAIMANT'S MOTION TO RECONSIDER** was Sent by Facsimile Machine Process ONLY upon each of the following:

Vernon K. Smith Fax #: 345-1129
1900 West Main Street
Boise, ID 83702

Jon M. Bauman Fax #: 384-5844
P.O. Box 1539
Boise, ID 83701

db

Dena K. Burke

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

2005 OCT 11 P 4:49
RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	MOTION TO COMPEL ATTENDANCE
	)	AT MEDICAL EVALUATION
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

Defendants, by and through the law firm of Elam & Burke, P.A., their attorneys of record
herein, hereby move the Industrial Commission for its order, pursuant to Idaho Code Section

72-433 and Rules 7 and 16, J.R.P., compelling Claimant to appear at and cooperate with an evaluation of her to be conducted by Richard W. Wilson, M.D., neurologist of Boise, on the grounds and for the reasons set forth in the Affidavit of Dr. Wilson, filed herewith, and on the further and additional grounds that Claimant, on March 31, 2005, underwent an electroencephalogram by Dr. F. LaMarr Heyrend, her treating psychiatrist and forensic expert in this matter, and that Defendants assert that they are entitled to have the electroencephalogram evaluated and to have Claimant evaluated incident thereto by Defendants' own expert.

Claimant did not appear for the evaluation with Dr. Wilson scheduled for 10:00 a.m. on May 11, 2005, as the Referee ordered on May 10, 2005. Rather, Claimant evidently relied on the fact that a Motion for Reconsideration had been filed at the last minute by her attorney. The Rule 10 deadline in this case is Monday, May 16, 2005. Defendants will be severely prejudiced if they are not permitted to have Claimant evaluated by their medical expert prior to hearing. It may therefore be necessary for the hearing in this matter to be vacated and rescheduled.


Defendants represent that Dr. Wilson is available to evaluate Claimant at a date and time to be determined but reasonably in advance of the May 26 hearing date. Dr. Wilson also needs to be given access to the electroencephalogram performed by Dr. Heyrend. That electroencephalogram so far has not been provided to defense counsel, and is the subject of Defendants' Motion to Enforce Subpoena Duces Tecum, filed with the Industrial Commission on May 10, 2005.

For the foregoing reasons, as well as those reasons set forth in the accompanying affidavit of Dr. Richard Wilson, Defendants respectfully move that Claimant should be required to attend

an independent medical evaluation with Dr. Richard Wilson and that in the event of her failure to do so, sanctions should be imposed.

Respectfully submitted this 11 day of May, 2005.

ELAM & BURKE, P.A.

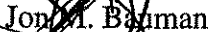
By: 
Jon M. Bauman, of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of May, 2005, I caused the above and foregoing instrument to be served as follows:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Federal Express
☒ Via Facsimile


Jon M. Bauman

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF

THE STATE OF IDAHO

STACY A. GIBSON,

Claimant,

v.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No. 01-015332

AFFIDAVIT OF
RICHARD W. WILSON, M.D.

STATE OF IDAHO)
) ss.
County of Ada)

Richard W. Wilson, having been duly sworn, upon his oath deposes and says as follows:

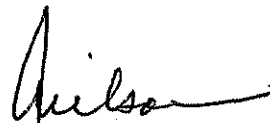
1. Your affiant is a board certified neurologist who has been licensed to practice medicine in the state of Idaho continuously since 1978. This affidavit is based on personal knowledge.
2. Your affiant was retained by Jon M. Bauman, attorney for the Idaho State Insurance Fund, relative to Stacy Gibson's claim for worker's compensation benefits. Your affiant has reviewed medical records pertaining to the treatment and evaluation of Mrs. Gibson as well as other documents pertinent to the case.
3. Your affiant believes to a reasonable degree of medical probability that Claimant should be evaluated by a neurologist and physically examined in person based on the fact that Claimant's treating psychiatrist, Dr. F. LaMarr Heyrend, has diagnosed Claimant as having "fugue" states and such fugue states may be evidence of a neurological problem, namely that Mrs. Gibson may have complex partial epilepsy. In that case, she should definitely be evaluated by a competent neurologist and a repeat electroencephalogram should be performed.
4. Mrs. Gibson should also be evaluated in person by a neurologist because Dr. Heyrend has testified that he obtained an abnormal electroencephalogram of Mrs. Gibson on March 31, 2005. Accordingly, an expert in neurophysiology should examine her in order to substantiate or otherwise evaluate Dr. Heyrend's assessment. The examination of Mrs. Gibson should include at least the taking of a neurological history and the conduct of an interview, a

neurological examination and a repeat electroencephalogram, which your affiant believes should be performed by a board certified electroencephalogram technician at an independent medical facility, i.e., St. Luke's Regional Medical Center, where it would be interpreted by an independent physician who has no involvement with this case. The repeat electroencephalogram would also be reviewed by Dr. Wilson, and compared with the electroencephalogram performed by Dr. Heyrend in order to address Dr. Heyrend's conclusion that Claimant had an abnormal electroencephalogram on March 31, 2005, and assess in what respects, if any, it is abnormal. The electroencephalograms would also be compared by Dr. Wilson in an effort to diagnose any neurological conditions from which Claimant may be suffering.

5. Attached hereto is a true and correct copy of the curriculum vitae of your affiant.

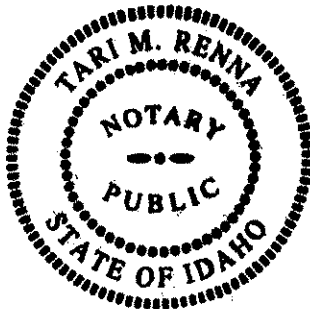
Further your affiant sayeth naught.

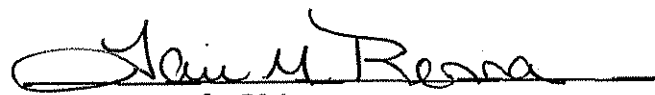
DATED this ____ day of May, 2005.



Richard W. Wilson, M.D.

SUBSCRIBED AND SWORN to before me this 11 day of May, 2005.




Notary Public for Idaho
Residing at: Boise
Commission Expires: Jan 21, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of May, 2005, I caused a true and correct copy of the above and foregoing instrument to be served by the method indicated below to the following:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Federal Express
☒ Via Facsimile
Fax: 345-1129
Phone: 345-1125


Jon M. Bauman

CURRICULUM VITAE

RICHARD WILLIAM WILSON, M.D.

PERSONAL INFORMATION

DATE OF BIRTH: September 16, 1943

PLACE OF BIRTH: Bronxville, New York

CITIZENSHIP U.S.

PROFESSIONAL ADDRESS AND TELEPHONE Boise Neurological Consultants
999 N. Curtis Road, Suite 506
Boise, Idaho 83706-2800
(208)367-2800

PRESENT ACADEMIC RANK AND POSITION

Auxiliary Faculty, Department of Medicine (Neurology)
University of Washington

Auxiliary Faculty (Neurology)
Boise Veterans' Administration Medical Center

EDUCATION

1961-1965 Ohio Wesleyan University, Delaware, Ohio, A.B. 1965

1965-1969 Cornell University Medical College, M.D. 1969

1969-1970 Straight Medical Internship
University of Virginia Hospital
Charlottesville, Virginia

1970-1971 Assistant Resident, Medicine
University of Virginia Hospital
Charlottesville, Virginia

1971-1973 Assistant Resident, Neurology
University of Virginia Hospital
Charlottesville, Virginia

1973-1974 Chief Resident, Neurology
University of Virginia Hospital
Charlottesville, Virginia

1976-1977 Fellow, Neuromuscular Physiology and electromyography
Mayo Clinic and Foundation
Rochester, Minnesota

986

Curriculum Vitae
 Richard W. Wilson, M.D.
 Page 2

HONORS/AWARDS

William Mecklenburg Polk Award for Research, 1969
 Cornell University Medical College

BOARD CERTIFICATIONS

1976 American Board of Psychiatry and Neurology
 1989 American Board of Electrodiagnostic Medicine (Charter Member)

MEDICAL LICENSURE

Idaho

MILITARY SERVICE

1974-1976 Chief, Adult & Pediatric Neurologic Services
 United States Air Force Regional Hospital
 Sheppard AFB, Texas
 Major

1974-1976 Director, Electroencephalography Laboratory
 United States Air Force Regional Hospital
 Sheppard AFB, Texas
 Major

PROFESSIONAL POSITIONS AND APPOINTMENTS

1974-1976 Consultant, Neurology
 Bethania and Wichita Falls General Hospitals
 Wichita Falls, Texas

1974-1976 Consultant in Neurology and Electroencephalography
 Wichita Falls State Hospital
 Wichita Falls, Texas

1977-1978 Associate Consultant in Neurology and Electromyography
 Mayo Clinic
 Rochester, Minnesota

1978 - Private Practice
 Boise, Idaho

1980-1991 Director, Southern Idaho Muscular Dystrophy Clinic

1984 - Medical Director, American Parkinson's Disease Association
 Information and Referral Center of Idaho

987

Curriculum Vitae
Richard W. Wilson, M.D.
Page 3

PROFESSIONAL POSITIONS AND APPOINTMENTS (CONT)

- 1989-1992 Board of Directors, Treasure Valley Chapter
Alzheimer Disease Society
- 1989-199 Medical Advisor Board
Humphreys Diabetes Center
Boise, Idaho

INSTITUTIONAL APPOINTMENTS

- 1981-1982 Secretary, Medical Staff
Idaho Elks Rehabilitation Hospital
Boise, Idaho
- 1982-1983 President-elect, Medical Staff
Idaho Elks Rehabilitation Hospital
Boise, Idaho
- 1983-1984 President, Medical Staff
Idaho Elks Rehabilitation Hospital
Boise, Idaho
- 1984-1986 Secretary-Treasurer, Medical Staff
Saint Alphonsus Regional Medical Center
Boise, Idaho
- 1987-1989 Chairman, Department of Neurology and Neurosurgery
Saint Alphonsus Regional Medical Center
Saint Luke's Regional Medical Center
Boise, Idaho
- 1993-1996 Board Member Idaho Neurological Institute

CURRENT MEDICAL STAFF APPOINTMENTS

- Saint Alphonsus Regional Medical Center, Boise, Idaho
- Saint Luke's Regional Medical Center, Boise, Idaho
- Veterans' Administration Medical Center, Boise, Idaho
- Idaho Elks Rehabilitation Hospital, Boise, Idaho
- Intermountain Hospital of Boise, Boise, Idaho

PROFESSIONAL ORGANIZATIONS

- Idaho Medical Association
- Ada County Medical Society
- American Academy of Neurology
- American Association of Electromyography and Electrodiagnosis
- Northwest Society of Neurology and Psychiatry
- Mayo Alumni Association

Curriculum Vitae
Richard W. Wilson, M.D.
Page 4

PROFESSIONAL ORGANIZATIONS (CON'T)

Idaho Neurological Society - President 1992-1995
Movement Disorder Society
American College of Physicians
Western EEG Society

CLINICAL PRACTICE, INTEREST

Clinical Neurology with special interest in Neuromuscular Disease and Electromyography
Resident Teaching
Neurology
Movement Disorders

INTRAMURAL PRESENTATIONS

Multiple presentations over the years to Nursing Staff
Saint Alphonsus Regional Medical Center and Idaho Family Practice Residency Program

NEUROLOGY TEACHING

Family Practice Residency monthly teaching lectures

INVITED LECTURES

03/14/92	State Farm Insurance Northwest Region Legal Trends Seminar, Seattle, Washington "Diagnostic Imaging"
05/05/93	Idaho Sureties Organization, Boise, Idaho "Post Polio Syndrome"
05/07/93	Idaho Academy of Family Physicians "Diagnosis & Treatment of Peripheral Neuropathies"
05/29/94	Idaho Industrial Commission, Boise, Idaho Forum on Workman's Compensation "Evaluations of Permanent Impairment"
01/15/94	17 th Annual Winter Conference - McCall, Idaho Update in Internal Medicine University of Washington School of Medicine "Common Peripheral Neuropathies"
02/23/94	American Parkinson Disease Association Idaho Middle Snake Chapter "Advances in Parkinson's Disease Research in the Decade of the Brain"
1994	Fibromyalgia Support Group of Idaho Neurologic Evaluation of Muscle Pain"

Curriculum Vitae
Richard W. Wilson, M.D.
Page 5
04/3/95

INVITED LECTURES (CONT)

- 04/03/95 Alzheimer Disease & Related Diseases Support Group
"Recent Advances in the Treatment of Alzheimer's Disease"
- 06/15/95 2nd Annual Idaho Neurological Institute Symposium
"Repetitive Work Injuries of the Upper Extremity"
- 07/11/95 Ada County Emergency Medical Services
"Neurologic Emergencies" and Hemorrhagic and Ischemic Strokes"
- 03/08/96 Idaho State Bar
Worker's Compensation Seminar, McCall, Idaho
"An Overview of Neurologic Testing in Neck Pain, Carpal Tunnel Syndrome and Low Back Pain"
- 01/16/97 Council on Education in Management
Worker's Compensation Update 1997
"Understanding Cumulative Trauma Disorders and the Pitfalls of Diagnosis and Treatment"
- 02/27/98 Idaho Trial Lawyers Association
Panel Discussion, Boise, Idaho
"How to Improve Physician/Attorney Interaction"
- 03/10/00 Idaho State Bar
Worker's Compensation Seminar, Sun Valley, Idaho
"Neurologic Exam"
- 02/22/03 Idaho Trial Lawyers Association
Mock Trial
- 04/05/04 Log Cabin Literacy Center, Boise, Idaho
"An Evening With Oliver Sacks" - Book Review and Discussion
The Man Who Mistook His Wife for a Hat

BIBLIOGRAPHY

- Wilson, R.W., Ward, M.D., Johns, T.R., "Effect of Prednisone on Neuromuscular Transmission (Abstract)"
Neurology 24:378, 1974
- Wilson, R.W., Johns, T.R., Joseph, B.S., Pelton, E.W., "Late Thymoma and Altered Immunity in Myasthenia Gravis (Abstract)"
Third International Congress on Muscle Disease, New Castle-Upon-Tyne, September 1974
- Wilson, R.W., Ward, M.D., Johns, T.R., "Corticosteroids: A Direct Effect at the Neuromuscular Junction."
Neurology 24:1091-95, 1975

Curriculum Vitae
Richard W. Wilson, M.D.
Page 6

BIBLIOGRAPHY (CON'T)

Houff, S.A., Burton, R.C., Wilson, R.W., et al., "Human to Human Transmission of Rabies Virus by
Corneal Transplantation"
NEJM 300:603, 1979

*Presented at the American Academy of Neurology meeting, April 26, 1994

04/14/04

169

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

2005 MAY 12 P 4: 08
RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	MOTION TO VACATE AND
	)	RESCHEDULE HEARING
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
_____)	

Defendants, by and through Elam & Burke, P.A., their attorneys of record herein, hereby
move the Industrial Commission for its Order Vacating the Hearing now scheduled to commence

MOTION TO VACATE AND RESCHEDULE HEARING - 1

G:\SHARED\0179\9303\PLEADINGS\Motion to Vacate and Reschedule Hearing.wpd

992

at 9 a.m. on Thursday, May 26, 2005, on the grounds and for the reason that Claimant's failure to participate in the evaluation by Dr. Richard Wilson has rendered it impossible for Defendants to prepare in time for hearing. Attached hereto is the Affidavit of Dr. Wilson setting forth the fact that Claimant failed to appear for the examination on May 11, 2005, and that Dr. Wilson is unavailable prior to the date of hearing in this matter. In any event, today is May 12, 2005. The Rule 10 deadline is Monday, May 16, 2005. There is simply insufficient time for Dr. Wilson to evaluate Claimant, have another EEG scheduled at a local hospital, administered by an independent EEG technician, and interpreted by an independent physician, much less afford Dr. Wilson adequate time to compare the EEG results with the results obtained in the EEG performed by Dr. LaMarr Heyrend - results which so far have not been produced by Dr. Heyrend or Claimant's counsel.

For the reasons sent forth in Dr. Wilson's Affidavit of May 11, 2005, Claimant should be evaluated by a neurologist in this matter. However, because rescheduling the hearing necessarily entails delay, and protracted delay necessarily would require that Claimant be re-evaluated to assess any changes in her condition, Defendants respectfully request that this hearing be rescheduled on an expedited basis, to prevent the need for re-evaluation prior to the hearing date.

Defendants respectfully request that a status conference be held with the Industrial Commission Referee at a time convenient to the Referee and all counsel, in order to arrive at a date when the hearing could properly be rescheduled.

RESPECTFULLY SUBMITTED this 12th day of May, 2005.

ELAM & BURKE, P.A.

By

Jon M. Bauman, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of May, 2004, I caused a true and correct copy of the above and foregoing instrument to be served by the method indicated below to the following:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail

☐ Hand Delivery

☐ Federal Express

☒ Via Facsimile

Fax: 345-1129

Phone: 345-1125

Jon M. Bauman

Ryan P. Armbruster
 Jon M. Bauman
 ELAM & BURKE, P.A.
 251 East Front Street, Suite 300
 P.O. Box 1539
 Boise, Idaho 83701-1539
 Telephone: (208) 343-5454
 Facsimile: (208) 384-5844
 Armbruster - ISB #1878
 Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF
 THE STATE OF IDAHO

STACY A. GIBSON,

Claimant,

v.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

I.C. No. 01-015332

AFFIDAVIT OF
 RICHARD W. WILSON, M.D.

STATE OF IDAHO)

) ss.

County of Ada)

Richard W. Wilson, having been duly sworn, upon his oath deposes and says as follows:

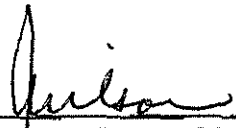
1. Your affiant is a board certified neurologist who has been licensed to practice medicine in the state of Idaho continuously since 1978. This affidavit is based on personal knowledge.

2. Claimant Stacy Gibson was scheduled to attend an evaluation at my office on Wednesday, May 11, 2005, beginning at 10 a.m. Claimant did not appear for the evaluation.

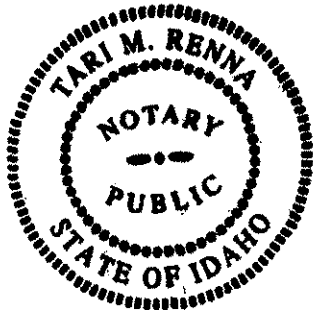
3. I have reviewed my schedule and I am booked with continuous appointments May 12 and 13, 2005. I am scheduled to leave for Alaska on May 14, and not to return to Boise until May 24, 2005. I have a trial at which I must testify on May 25. I will be out of the office again on May 26 or May 27, 2005, though my plans have not yet crystallized to the point that I can state for certainty which date that will be. Accordingly, I have no time to evaluate Ms. Gibson prior to the date of the hearing, which I understand is scheduled to begin May 26, 2005, and extend through the following day.

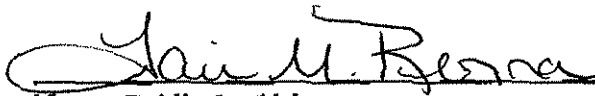
Further your affiant sayeth naught.

DATED this 12th day of May, 2005.


Richard W. Wilson, M.D.

SUBSCRIBED AND SWORN to before me this 12 day of May, 2005.




Notary Public for Idaho
Residing at: Boise
Commission Expires: Jan 21, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of May, 2005, I caused a true and correct copy of the above and foregoing instrument to be served by the method indicated below to the following:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Federal Express
☒ Via Facsimile

Fax: 345-1129

Phone: 345-1125



Ian M. Bauman

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

	o0o	
)	
STACY A. GIBSON	)	I.C. Case No. 01-015332
)	
Claimant,	)	<u>CLAIMANT'S RESPONSE</u>
	)	<u>TO DEFENDANTS' MOTION</u>
v.	)	<u>TO COMPEL ATTENDANCE</u>
	)	<u>AT MEDICAL EVALUATION</u>
ADA COUNTY SHERIFF'S OFFICE,	)	<u>AND MOTION TO ENFORCE</u>
	)	<u>SUBPOENA DUCES TECUM</u>
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
	o0o	

COMES NOW The Claimant above-named, through counsel, Vernon K. Smith, and does respectfully move the Idaho Industrial Commission to deny Defendants' Motion as presently submitted, seeking Claimant to ignore her treating physician's advice, and be compelled to appear for another advocacy evaluation conducted by Richard W. Wilson, M.D., and to deny Defendants' Motion to Enforce Subpoena Duces Tecum, as the EEG test results and related documents were disclosed and produced previously. Claimant does request denial for the reasons and upon the grounds as follows:

ORIGINAL

998

1. On May 10, 2005, Claimant filed with the Idaho Industrial Commission a Motion requesting the Commission reconsider its order entered May 10, 2005, which therein required Claimant to submit to an examination by Dr. Richard Wilson, M.D., to take place on May 11, 2005. In support of Claimant's Motion, an Affidavit was presented by her primary care psychiatrist, Dr. F. LaMarr Heyrend, M.D., therein verifying his medical opinion confirming she is suffering significantly from the Post Traumatic Stress Disorder (PTSD) caused by the County, and re-victimized by Dr. Brownsmith. This condition is classified by Dr. Heyrend as a "mental-physical" workplace injury in accordance with medical diagnosis and existing case law; that Dr. Heyrend has verified Claimant's extreme PTSD condition with an electroencephalogram (EEG) brain mapping diagnostic testing process he conducted through careful analysis on March 31, 2005; that Dr. Heyrend's medical opinion remains absolute: Claimant is being re-victimized each time she is confronted by advocates and evaluated under the efforts of Defendants' paid advocacy professionals, such as Dr. Cynthia Brownsmith, and has been confirmed from the confrontational episodes on June 20, 2003, June 24, 2003, July 11, 2003, and lastly on April 14, 2005; that because of Claimant's repeat re-victimization, Dr. Heyrend was required to prescribe Guanabenz to Claimant on April 15, 2005, in an effort to balance the locus caeruleus aspect of her brain, which, with time, will serve to reduce Claimant's anxiety, and structure a pathway for his ongoing psychotherapy sessions; that additional time is required for Dr. Heyrend to be able to provide further medical attention to Claimant before she is sufficiently stabilized and even capable of being confronted again by any further

adversarial medical evaluations and examinations. Furthermore, any future adversarial proceedings must be conducted in the presence of Dr. Heyrend, as he believes Claimant must be protected from this abusive self-serving conduct engaged in by the County, would be contradicting the medical opinion and his advice given to her is to maintain healing, not debilitate her; that he is her primary care psychiatrist, and he does not want her made available for any further confrontations by advocates of Ada County or the State Insurance Fund until such approval is submitted by Dr. Heyrend; that Dr. Heyrend is also of the medical opinion if Claimant were to be subjected to any more of these intrusive and unwarranted examinations, there is the potential risk of causing Claimant further psychological trauma and strong potential of permanent psychological injury.

2. Claimant is aware she can be evaluated by an expert chosen by Ada County and the State Insurance Fund, pursuant to § 72-433, Idaho Code, and if she unreasonably fails to submit to an examination requested by Defendants, any proceedings under the Workmen's Compensation law may be suspended until her failure ceases. But more importantly, and to the contrary, Claimant is also aware, pursuant to § 72-435, Idaho Code, that the Industrial Commission is also authorized to order the suspension of proceedings if Claimant participates in any unreasonable and injurious practices which tend to imperil or retard her medical recovery. Her participation in the adversarial and confrontational examinations does absolutely retard and defeat her efforts at medical recovery, and this situation has simply degraded these proceedings into a proverbial "Catch 22" situation or a "Pandora's Box" type conundrum. At this time, for Claimant to participate in any further

evaluations or examinations is not only unreasonable and perilous to her health, but would be exposing her to permanent damage, and violates the advice and healing effects of her therapist.

3. As stated above, and as provided in the Affidavit of Dr. F. LaMarr Heyrend, M.D., at this time, and with this particular patient (Claimant), any attempts by Ada County and the State Insurance Fund, through the instrumentality of the Idaho Industrial Commission, to compel Claimant to be further examined by an advocate, will prove to be injurious to her mental and physical health, and does violate the therapist's healing efforts and oath of practice.

4. The last two unreasonable and unilateral attempts of Defendants, that required Claimant's attendance for examinations, have not been accommodating in any fashion to the Claimant, and she was denied the controlling effects of Idaho law and quite to the contrary, she was made to endure conduct that was injurious to her health. In the letter dated April 6, 2005, Mr. Jon Bauman unilaterally undertook to schedule Claimant for evaluation by Dr. Brownsmith, deliberately done without accommodating any other necessary schedule, and that prevented the treating therapist's attendance as is absolutely allowed by § 72-433 (2), Idaho Code. In the Commission's order on March 25, 2005, the Referee stated "Claimant is allowed to bring only one (1) treating physician", but the Commission's April 12, 2005 order, was unaccommodating to Claimant when it stated: "that the availability of any other physician was not a basis for scheduling".

5. In a similar fashion, done unilaterally again, without sufficient notice, Defendants scheduled further medical evaluation of Claimant by Dr. Richard Wilson

on May 11, 2005, first scheduled by Jewel Owen, State Insurance Fund, by her demand on April 28, 2005. This request was unaccommodating to Claimant, and designed to prevent the attendance of Claimant's primary care psychiatrist, contrary to § 72-433 (2), Idaho Code.

6. These unilateral schedulings are in contradiction of Idaho law, as all Industrial Commission proceedings are required to be simple, accommodating to claimants, and above all, the sole purpose is to seek justice. See Hartman v. Double L Manufacturing, Employer, and Everest National Insurance Company, Surety, Idaho Supreme Court, Docket No. 30372, filed April 6, 2005; Hagler v. Micron Technology, Inc., 118 Idaho 596, 798 P.2d 55 (1990). See also Claimant's Objection filed May 6, 2005.

7. Defendants well know Claimant has not unreasonably failed to submit to examination by a physician designated by Defendants and made known to the Commission, but now her doctor's advice must have the final determination. What Claimant has done, and in a sound and reasonable manner, is to object to being injured again, and will not submit to examinations or evaluations that are currently and potentially injurious to her mental, emotional and physical health, and without having the presence and assurance of her primary care psychiatrist during any more adversarial evaluations, if in fact, it is not conducted hereafter solely by file-document review.

8. On May 11, 2005, Defendants submitted their Motion to Compel Claimant's attendance for the evaluation by Dr. Wilson, but in their Motion, Defendants have intentionally misled the Industrial Commission by erroneously

stating "the electroencephalogram so far has not been provided to defense counsel, and ..." (Motion, p. 2, L 16-17). Contrary to that statement. Claimant's counsel, on May 6, 2005, did submit a complete copy (42 pages) of the data collected and the colored graphical representations of the electroencephalogram (EEG) brain activity testing that Dr. Heyrend performed on Claimant on March 31, 2005. A copy of Claimant's May 6, 2005 Supplemental Discovery Response and the 42 pages (now reproduced only in gray scale) are attached hereto for convenient reference.

Furthermore, Defendants also submitted a Motion to Enforce Subpoena Duces Tecum, and again providing the Commission with the erroneous statement Dr. Heyrend and/or Claimant's counsel have not produced Dr. Heyrend's chart notices of Claimant, nor produced a copy of Claimant's EEG undertaken by Dr. Heyrend on March 31, 2005. As stated above, the 42 pages of EEG data and graphical representations were provided to Defendants' counsel on May 6, 2005. Also provided to Defendants' counsel with Claimant's May 6, 2005 Supplemental Discovery Response, was a letter from Dr. Heyrend to Claimant's counsel. Attached to his letter Dr. Heyrend provided a copy of his progress notes (chart notes) he prepared concerning his examinations and psychotherapy sessions with Claimant. A copy of Dr. Heyrend's May 6, 2005 letter, including those progress notes is attached hereto for convenient reference.

9. Claimant and her psychiatrist are unfamiliar of any basis to suggest Claimant may have a "complex partial epilepsy", as stated in the Affidavit of Dr. Richard W. Wilson. Claimant has no family history of epilepsy, and no physicians (including Stephen E. Spencer, M.D., F. LaMarr Heyrend, M.D., or the

psychologists, Dr. Cynthia Brownsmith and Joe A. Lipetzky) have ever found any basis to allude to such a diagnosed condition. What Claimant suffers from came from the events that occurred on July 20, 1999, and continued thereafter, and is a psychological workplace injury characterized as a "mental-physical" injury.


10. Of interest, in each of Defendants' earlier motions to compel (October 28, 2002, June 12, 2003, April 27, 2004), and now on page 3 of Defendants' May 11, 2005 Motion to Compel, Defendants' continue to exhibit an attitude of bad faith toward Claimant, requesting either sanctions or dismissal of her claim for benefits. It appears the purpose of these unreasonable and questionable tactics is to expose Claimant to further emotional and mental stress and physical disturbances.

These repeated attempts to engage a confrontational adversarial examination is similar to the attempts at direct contact with Claimant at her place of employment by Defense counsel in the months of February and March, 2003. Such conduct had the effect of causing Claimant additional emotional distress and psychological harm. We have been tolerant of these disturbing strategies undertaken by Defendants, but this has culminated in overloading Claimant's ability to deal with these ongoing adversarial confrontational acts by Defendants, and must be curtailed.

Claimant moves the Idaho Industrial Commission to deny Defendants' request, as sponsored by their present May 11, 2005 Motion to Compel, and allow Dr. Heyrend to continue his efforts to stabilize Claimant's medical condition over the next few months before Claimant is again "ordered" by the Commission to attend a further evaluation by advocates of Defendants. At such time Dr. Heyrend

determines Claimant is sufficiently able to endure more confrontation, healed and is psychological stable to attend more advocacy evaluations, we may then address the necessary arrangements for more examinations in the presence of Dr. Heyrend, and have the session video taped as well.

Dated this 12th day of May 2005.


Vernon K. Smith
Attorney for Claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 12th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho 83720-0041

()	U.S. Mail
()	Fax
(<input checked="" type="checkbox"/>)	Hand Delivered

Jon M. Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701

()	U.S. Mail
(<input checked="" type="checkbox"/>)	Fax
(<input checked="" type="checkbox"/>)	Hand Delivered


Vernon K. Smith

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

	o0o	
STACY A. GIBSON	)	I.C. Case No. 01-015332
)	
Claimant,	)	<u>CLAIMANT'S SEVENTH SUPPLEMENTAL</u>
	)	<u>RESPONSE TO DEFENDANTS'</u>
v.	)	<u>REQUEST FOR PRODUCTION OF</u>
	)	<u>DOCUMENTS AND INTERROGATORIES</u>
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
)	
Defendants.)	
	o0o	

COMES NOW The Claimant above-named, through counsel, and does respond further to Defendants' Seventh Request for Supplementation of Discovery Responses, and does include the following documents:

1. All Exhibits and Witnesses included in Claimant's Rule 10 Disclosure will be offered as evidence at any hearing, and has been previously provided to Defendants in prior responses to Defendants' former production requests.

2. Dr. F. LaMarr Heyrend has provided a combination of diagnostics, evaluation, treatment, therapy and electroencephalogram (EEG) brain activity

testing and diagnosis of Claimant, and there will be further diagnosis and further reporting on the "mental-physical" aspects of Claimant's injuries. The brain mapping electroencephalogram (EEG) process was addressed in the deposition of Dr. Heyrend as conducted on May 5, 2005, and claimant does again disclose the March 31, 2005 EEG evaluations and testing will be presented to the Idaho Industrial Commission Hearing (Rule 10 G, J.R.P.P.). As a consequence of Dr. Heyrend's office commitments, patient practice and program participation, he has not had sufficient time to complete the written report of his latest assessments and evaluation of Claimant, but that was addressed in this deposition taken May 5, 2005.

3. A complete copy (42 pages) of the data collected and the graphical representations of the electroencephalogram (EEG) brain activity testing Dr. Heyrend performed on Claimant on March 31, 2005.

4. Dr. Heyrend's April 4, 2005 two (2) page EEG/EVOKED POTENTIAL REVIEW of Claimant.

5. Dr. Heyrend's April 15, 2005 SPECIAL CORE EVALUATION OF Claimant.

6. Dr. Heyrend's May 6, 2005 letter (and enclosures) to Claimant's counsel, concerning his medical opinion as to the effects and injury of Claimant's mental, emotional and physical health, due to the re-victimizing consequences of more examinations of Claimant by Defendants' medical advocates for Ada County and the State Insurance Fund.

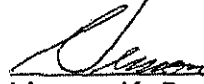
7. There is the non-scientific graphical representations and portrayal of Claimant's mental, emotional, physical health, behavioral state and her course of conduct from 1994 through April 2005, as prepared by Mr. Gibson, as on April 4, 2005, Dr. Heyrend requested Claimant's husband, John Gibson, reduce to a written graphic format his observations of Claimant as he has recorded them to assist Dr. Heyrend in demonstrating how events affect a PTSD individual.

8. Claimant's April 6, 2005 Costco Pharmacy receipt for Lexapro, prescribed to her by Dr. Heyrend.

9. Claimant's April 18, 2005 Costco Pharmacy receipt for Guanabenz, prescribed to her by Dr. Heyrend.

10. A copy (4 pages) of "Military Veterans PTSD Reference Manual" Dr. Heyrend provided to Defendants' counsel and Claimant's counsel during Dr. Heyrend's deposition on May 5, 2005. A complete copy of this document has been requested from Dr. Heyrend, and will be provided to Defendants' counsel upon receipt by Claimant's counsel.

Dated this 6th day of May 2005.


Vernon K. Smith
Attorney for Claimant

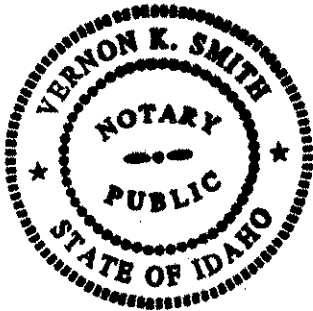
STATE OF IDAHO)
 : ss
County of Ada)

Stacy A. Gibson, being first duly sworn upon oath, deposes as follows:

That I have read the above and foregoing Claimant's Seventh Supplemental Response to Defendants' Request for Production of Documents and Interrogatories, know the contents thereof, and the facts therein stated I believe to be true.

Stacy A. Gibson
Stacy A. Gibson
Claimant

SWORN AND SUBSCRIBED to before me this 6th day of May 2005.



[Signature]
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 12/20/06

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 6th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows.

Mr. Jon Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701-1539

(☒) U.S. Mail
(☐) Fax
(☐) Hand Delivered

[Signature]
Vernon K. Smith

1040

INTERMOUNTAIN NEUROPSYCHIATRIC CENTER

May 6, 2005

Vernon K. Smith
1900 West Main Street
Boise, Idaho 83702

RE: Stacy A. Gibson

Dear Mr. Smith:

I received from your office a copy of the State Insurance Fund notice, therein advising Ms. Gibson they have scheduled her for an additional evaluation with Dr. Richard Wilson, M.D. on May 11, 2005.

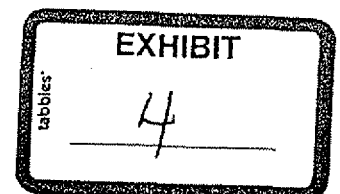
Once again, I must express my concern for the welfare of Ms. Gibson's mental, physical and emotional health, and would state that any further pursuit of Ms. Gibson by a medical advocate for Ada County or the State Insurance Fund, would not be beneficial to Ms. Gibson in any manner, and will only serve to injure her further. I am still attempting to stabilize her from the situation that arose during the April 14th evaluation conducted by Dr. Cynthia Brownsmith.

As I reviewed my progress notes of my appointments with Ms. Gibson and my letters to you of April 21, 2003 and March 24, 2005, I have very strongly articulated my medical opinion that the re-victimization of Ms. Gibson is a priority concern and needs to cease and desist, immediately. I have attached copies of those letters and progress notes for your convenient reference.

Furthermore, my specific medical opinion is to the effect any further attempts by Ada County or the State Insurance Fund to re-victimize Ms. Gibson, through the use of any medical expert (and perceived to be an advocate for the County and the State Insurance Fund), will intensify the symptomatology of Ms. Gibson's Post Traumatic Stress Disorder, and will also continue to hinder my efforts to treat Ms. Gibson with our psychotherapy sessions and medications I have prescribed for her.

Sincerely yours,

F. LaMarr Heyrend
F. LaMarr Heyrend M.D.



1011

Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: [REDACTED]
GENDER: Female
DATE: 04/15/05

SPECIAL CORE EVALUATION

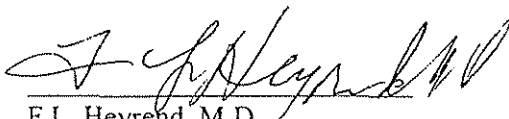
What we have is a situation where we have to recognize that she became grossly upset when she went for her interview and evaluation with the psychologist that attorney, Mr. Baumann, arranged. She became extremely anxious and had to leave the interview. Her husband then talked to the psychologist, Cynthia Brownsmith. He pointed out that all Stacy wanted to accomplish is that the previous record be corrected. He was concerned about the fact that the record was incorrect and they just wished to bring the record into line.

I then explained several things. First, I do not look at psychological dynamics the same way I look at neurophysiology. As such, I know that panic attacks involve the locus caeruleus or red nucleus and the hippocampus. This is part of the original reptilian "fight or flight" system. Of course, the locus caeruleus is paired with the nucleus of Raphe and the two of them are in the midbrain (the center of the brain), magenta colored, and that is the autonomic nervous system (sympathetic and parasympathetic). The sympathetic is, of course, the nucleus caeruleus. Therefore, as we look at the situation, we can see that if you have to have all of the noradrenalin responses go through the nucleus of caeruleus then, in fact, having it in as tight of regulation as possible will assist in controlling panic attacks. At this particular point, I insisted that Stacy take guanabenz (because it is an alpha-agonist), going up to 4mg b.i.d., to try to balance out the locus caeruleus. This would cause her to have less anxiety. She did not wish to take more medicine but I said that plus Gabitril 4mg b.i.d. might very well handle the anxiety reaction that she is having.

I explained that if you take 100 people, only about 10% develop PTSD in traumatic experiences and these people are predisposed because the locus caeruleus is easy to downgrade. I pointed out that the guanabenz 4mg b.i.d. would help to stabilize and strengthen the locus caeruleus and would help her depression and anxiety. I suggested that Gabitril would be the next addition and that the amount of Xanax she then needs would be considerably reduced. I pointed out the fact that on her EEG, particularly her eyes open alert, her high beta activity is directly related to her anxiety and her PTSD. This has been established through the Veteran's Administration, who accept EEG computerized evaluations because it does show increased beta as one of the signs that says people have PTSD.

PLAN:

- ♦ In any event, we had a very long discussion, approximately 50 minutes. I also pointed out to John how to put together a chart that would help others to understand where I am coming from in terms of the problem.


F.L. Heyrend, M.D.
FLH/kvh (929)

Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: [REDACTED]
GENDER: Female
DATE: 04-04-05

EEG/EVOKED POTENTIAL REVIEW

EEG: As we go looked at Stacy's total record, we found that she frequently has increased frontal activity, frequently has standard deviations that are in excess of two frontally, frequently has dropout of the right posterior quadrant in P300s. She has extremely low voltage in her eyes open post-hyperventilation study, eyes closed resting study, and the eyes open alert study. In fact, we can safely say that in general she is running at about 25% of the μV^2 that we expect. This is often seen in affective disorders.

On the EEG, we find frontal alpha. Frontal alpha is related to a predisposition to become depressed and hyperactive to stress. Thus, as we look at her study more we recognize that she clearly is disinhibited in the right frontal quadrant. Therefore, the area in which we "put on the brakes" when you become upset is not very functional. Therefore, it is not surprising that she can really get upset, throw dishes, and so forth.

With the increased beta, which is related to anxiety, with the frontal alpha, and with the low voltages in terms of μV^2 on the EEG, we have the pattern of the person who is suffering from generalized anxiety reaction, an affective disorder, and one who manifests mood instability because of abnormal activity in the right frontal quadrant, which is the area that "puts on the brakes" when one becomes angry or upset.

EVOKED POTENTIAL: As we look at the evoked potentials, we find that the P300s, which are the imprinting waveform for the end of short-term memory, they tend to lateralize away from the right posterior quadrant towards the left and are not good from the standpoint of morphology. The latency is acceptable. That is the time that it takes for them to form. Certainly, efficient, effective imprinting is questionable because of poor morphology and the fact that they are broken up.



Intermountain Neuropsychiatric Center
411 Allumbaugh Street
Boise, Idaho 83704
(208) 376-2518

PATIENT: Gibson, Stacy
DOB: [REDACTED]
GENDER: Female
DATE: 04-04-05

EEG/EVOKED POTENTIAL REVIEW

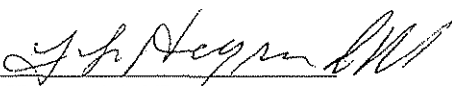
DISPOSITION/PLAN:

Therefore, we can clearly see that we have a person who is in the group of hyperfrontal people with affective disorders, anxiety disorders, and panic disorders that are susceptible development of PTSD. We all know that not everyone develops PTSD but there is a subset that do. What we find in this woman is representative of these findings. Please refer to Veteran's Administration EEG findings in PTSD.

Thus, very clearly what happens is that you have a woman who has a weak ego in that she has had a great deal of difficulty in her life in terms of becoming what she feels she should be and should become, and she finds a career as a police officer that solves these problems and gives her a good identify, and "presto", she is taken aside and told that her career is over and she is going to the penitentiary, and that she should understand what is going to happen to her. In other words, they are pointing out to her what happens to police officers in jail. To her, this was a death threat. It would simply rip her life apart. In addition, to have two of her associates put her in a room and pound on her is an unreasonable approach.

In terms of intrusive feelings from watching television, in terms of dreams, and in terms of scanning and being fearful, we can understand. In terms of the fact that she has some problems with gating and flooding of her mind because the input module to her mind is wide open, this tends to decrease the quality of cognition and increase anxiety. With high-anxiety and panic reactions already, it is very easy for her to downgrade the control of the locus caeruleus, the nucleus amygdala, and hippocampus, and the flight or fight response (which is what panic is) was brought about.

In retrospect, there is absolutely no question that she would qualify for traumatic neurosis, as defined in DSM-II and DSM-III, and she qualifies for PTSD on the basis that a life-threatening event did, in fact, occur and she felt she was about to be destroyed.


F.L. Heyrend, M.D.
FLH/kvh (752)

PROGRESS NOTE

Stacy Gibson

T: 10/24/03

COPY

SUBJECTIVE: Stacy comes in and we discuss the fact that Vaughn Killeen, who of course was the point of the spear that has been causing her difficulty and charging her with illegalities, and so forth, and which resulted in her PTSD, is a friend of her boss, Bernie Rakoz. What happens is that they want to put a sign "Vote for Vaughn Killeen, right out a window that she has to look at. This, I think, is a normal reaction because of the gravity of the situation which she has gone through. To move it so it is out of her line of view is certainly what one would call an act of kindness, or appropriateness, or to move it to another spot. But in any event, we simply have to recognize that this reaction is, in part, a measurement of the psychological impact of this "mess," and the fact that it does have some longitudinal effects.

The disinhibition which she is concerned about in terms of outbursts is also obvious in this situation so that we have to just simply note she has had, with this episode, some disinhibition of her verbal thoughts and has dumped on the people around her. This again falls within a shady area, but is not to be considered grossly abnormal.

She talked a great deal about the report Cynthia Brownsmith put together, and both she and her husband were grossly concerned with what she thought were errors and distortion of facts and they wish to have some things changed. They said that in any court record it should be precisely correct and you are always entitled to these changes. It is particularly true when her husband also knows that certain statements were not correct because he, too, experienced it. So, the likelihood of Stacy having said these things, which both of them know is not very likely.

I think that from an understanding of PTSD, and what goes on with PTSD in terms of the hippocampus megala, the locus caeruleus nucleus of her FFA, is unfortunately not being allowed to readjust and correct itself, with the help of medication and so forth, because of the fact that the assaults have continued. I do not know how to cease the revictimization process. Certainly, this whole business should be brought to closure, because the woman that I am looking at I feel very comfortable with, and certainly not a threat to herself or other people, and is certainly not of a criminal type.

I will see her again in approximately three weeks. Meds are going to stay the same except we are going to consider increasing the Gabitol and alpha II blocker.

F. L. Heyrend M.D.

F. L. HEYREND, M. D.

10/24

PROGRESS NOTE

Stacey Gibson

10/22/03

COPY

SUBJECTIVE: Stacey is obviously having difficulties. We had a long discussion about the fact that she is going to get better. What has been the problem is that as she starts to calm down and go back into regulation of her anxiety, she gets caught or hit with another spear. It is hard to explain what is going on and why this simply hasn't been able to resolve, but at any rate what we have is a very difficult situation where she is intermittently ending up in the barrel and speared. I do not see any reason why she should end up in the barrel and being attacked again.

She is really upset over Dr. Brownsmith saying she created information which she didn't say and, of course, I had no comment regarding this. This was also upsetting to our patient. She is going to return and see me next month. She is going to continue her Lexapro, which I think is the best medicine for her and see if this can't be worked out. I do not see why it is necessary for this to continue and let's give her a chance to stabilize.

F. L. Heyrend M.D.

F. L. HEYREND, M. D.

10/16

PROGRESS NOTE

Stacy Gibson

09/03/03

COPY

SUBJECTIVE: Stacy comes in and we discussed the fact that Vaughn Kalleen who of course is the point of the spear that has been causing her difficulty and accusing her with illegalities which resulted in her PTSD is a friend of her boss Bernie Rekozy and what happens is that they want to put a sign 'VOTE FOR VAUGHN KILLEEN' right out her window that she has to look at. This I think a normal reaction because of the gravity of the situation which she had gone through. To move it so that it is out of the line of view is certainly what one would call an act of kindness or appropriateness. It could be moved to another spot. But in any event we simply have to recognize that this reaction in part is a measurement of the psychological impact of this "MESS" and the fact that it does have some longitudinal effects.

The disinhibition which she is concerned about in terms of outbursts is so obvious and in this situation so we have to just simply note that she has had some disinhibition of her verbal thoughts and has dumped on the people around her which again falls within a shady area but is not to be considered grossly abnormal.

She talked a great deal about the report which Cynthia Bounds put together and what she and her husband were concerned about what she thought were errors or distortion of facts or some reversal of facts and so that they wished to have some things changed. Which I said in a court record of course it should be precisely correct and you are always entitled to these changes. It is particularly true when her husband also knows that her statements are not correct because he to experienced it and the likelihood of Stacy saying these things are not very likely.

I think that the fundamental understanding of PTSD and that which goes on in PTSD in terms of the hippocampus amygdala the locus coeruleus nucleus of rafee is unfortunately not being allowed to readjust and correct itself with the help of some medication. This is because of the fact that the assaults have continued. I do not know how to cease the revictimization process but certainly this whole business should be brought to a closure because the woman that I am looking at I feel very comfortable with and is certainly not a threat to her self or other people and is certainly not a criminal type.

I will see her again in approximately 3 weeks. Her meds are going to stay the same except that we are going to have to consider increasing the Gabitril and the alpha 2 blocker.

F. L. Heyrend M.D.

F. L. HEYREND, M.D.

1014

PROGRESS NOTE

Stacy Gibson

8/13/03

COPY

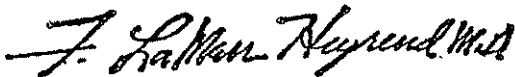
SUBJECTIVE: We have to focus on the 8th of July, when in her case, they had notification from the Supreme Court that there had been an error in procedure, and that the error lay on the side of the county. They got notification that this had occurred, and that they would probably have to go through the process again. They had to go back to the County Commissioner's and then to judicial review.

As we look carefully at this, it becomes patently obvious that this represented a stress. On the 8th when she was driving, she saw a county car behind her, and simply pulled over to the side. She said this was because she was feeling strange. She had a fugue state where she couldn't remember anything, and a tremendous amount of panic. This was in reaction to simply seeing a county car. Therefore, one has to attest to the fact that even though we know that in the majority of cases, PTSD does improve, and is not a sick diagnosis but a diagnosis that is related to a stimulus. One that she should not be expected to have to endure. She therefore by this reaction is still in the recovering phase, and is still in the post-traumatic stress disorder.

In seeing her today, there is no question that she has shown improvement. She still reports the times in which there is a sleep disturbance. Also, at times, in an attempt to defend herself, she will get caught up in daydreams. Along with daydreams of course, is the most severe reaction, which is a fugue state. These are psychological escape mechanisms that are designed to protect the person, because they are having intrusive recollections that are too painful.

Because of the fact that the Supreme Court took them back to ground zero, they have to start all over again after four years of problems. I am going to give her some Lexapro. An SSRI will increase her tolerance of stress, and aid her in thinking a little more clearly.

We should note that the panic attacks and waves of anxiety hadn't occurred for over a year and a half, until this occurred.



F. LaMarr Heyrend, M.D.

FLH:sls

10/18

PROGRESS NOTE

Stacy Gibson

10/16/02

COPY

SUBJECTIVE: We had a long, long discussion. It would appear that her primary complaints are interference with her short-term memory, anxiety, hyperreactivity, feelings of loss of self-esteem, intrusive recollection (particularly when watching TV), and so forth. The best way to substantiate is to have a good neuropsychologist see her and test her with standardized tests, and we can tell where she is and I think this is a good idea. I suggested Dr. Eisenbeiss, which would be helpful.

It appeared that she was told that she had a responsibility to report any dramatic increases in money which she received by accident from the payroll office. She said that it was a direct deposit, and she didn't note that she had received more than she should have received. She was told she was going to the penitentiary and would be charged with fraud, etc. In any event, they relegated her to what she and her husband describe as "kind of a blubbery mass of protoplasm." This is indeed a difficult situation, and the chain of events in which she received two or three checks at once somehow will have to come out of the state records. The fact that she did not note that she had had a bonanza seems credible enough, and at this point I would say that what has happened with the extension and the argument and the threats, is that she's gone through a series of re-victimizations which has intensified the symptomatology. PTSD usually begins in about six months, and at the end of two years is improved, even in military situations. In this situation it would have been much better had it not been for the continued re-victimization.

Prior to this incident, she was making a career in law enforcement; she wanted to be a female deputy sheriff. She was performing well at her job she thought, and had had good reviews, so she was on line with her career.

In her early life, there had been no horrible traumas, and no previous history of PTSD.

Her overall health has been basically quite good, and at her age she looks very solid for her age.

Mental Status Examination:

She's obviously oriented to time, place, and person. She obviously is average IQ. She obviously is having some difficulty with her memory and she is presenting as very anxious. Her memory problem seems to be that her concentration and focus is such that she will only remember one of three objects for two to three minutes. This of course is something that has to be repeated because she is now in a situation which is anxious in that she's not used to seeing a psychiatrist. In terms of proverbs, similarities and differences, this woman obviously is thinking, and of course is not a retarded person. Her verbal abilities are what you would expect from someone who is doing well in a career in law enforcement. She has no evidence

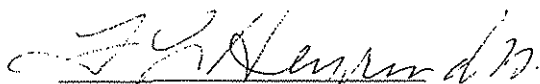
10/19

of a thought disorder; her concentration is borderline in that one has to repeat, if she starts to become anxious one has to repeat and hold her on focus, and then she's able to perform.

Clinical Impression:

This woman obviously is suffering from post-traumatic stress disorder. She would have done well except for a series of re-victimizations where she is beaten down, degraded, etc., and this has been very difficult for her. In order to clarify issues before I do the final DSM-IV diagnostic panel, we're going to have her have some neuropsych testing with Dr. Eisenbeiss.

I have detailed handwritten notes that describe the sequence of events and the re-victimizations.


F. LaMarr Heyrend, M.D.

FLH:sls

COPY

1020

NEURO-BEHAVIORAL ASSESSMENT

Name: Stacy Ann Gibson

DOB: August 30, 1958

CC

Identifying

Information: 44 year old female - married for 7 years to John Gibson (second marriage) Employed as Bookkeeper with Bernie R. Rakozy - Bankruptcy Trustee

Birth

History: Born August 30, 1958 in Burley, Idaho
3rd and youngest child in family

Developmental

History: Attended Elementary through High School in Burley, ID
Married 1st time at age 17

Medical

History: Diagnosed with asthma and allergies
Diagnosed by Dr. Spencer with migraines and seasonal depression. Hysterectomy approximately 10 or 12 years ago.
Removal of lump on back April and July 1999

Allergies Grasses, trees, dust, cats, horses, Zolof, Celexa

Head

Injury none

Past

Medications Dr. Spencer prescribed Zolof, Celexa, Wellbutrin and Effexor for depression. Klonopin and Trazadone to calm me down. Had allergic reactions to some of anti-depressants.

Current

Medications None

Attachment/Bonding: Excellent relationship with husband. He is very supportive.

Family

History: Youngest of 3 children. Parents, brother and sister are all still living. I have 3 natural children (2 girls, 1 boy) and 2 step-daughters.

Social

History: Prior to July 1999 I was outgoing and developed good rapport with co-workers. Since July 1999 want to stay away from people.

Education: Graduated Burke High School in January 1976. Attended C.S.I. for computer classes and business management for company. Took several correspondence courses provided to me by the Ada County Sheriff's Department.

Legal

History: Divorce and child custody cases (1990). Legal action against Ada County (July 1999 to present).

COPY

Drug and Alcohol History:

Tried marijuana briefly at age 16.
Drink a beer or glass of wine every once in a while with dinner.

Affect: Flat___ Blunted___ Pressured speech___ Flight of ideas___ Hypervertal___ *none*

Dysthymic___ Depressed ☒ Hypomanic___ Mood Swings___

Cognition: Delusional___ Auditory Hallucinations___ Visual Hallucinations___ *OK*

Overactive Imagination of Jung___ Tangential thinking___ Violent/Morbid thoughts___ *ng*

Obsessive thoughts ☒ Suicidal Ideation___ Homicidal Ideation___

Compulsive

Behaviors *Diagnosed with Obsessive Compulsive Disorder by Dr. Spencer*

Self mutilation *none*

Explosive

Temper *none*

Clinical

Summary: _____

S. Lori Johnson, LCSW

COPY

1023

PATIENT INFORMATION

test Date = 03-31-2005
patient Name = GIBSON, STACY
Address = 5501 TINKER STREET
city = BOISE
sTate = ID
Operator = RT
Phone # = 208-345-1125
Birth date =
Ss # = DR. HEYREND

data file name = 006220 next record = 5 current record = 1

Comments = JEP B\ E RH ALERT

electrode Reference = A1 A2 patient Ground = FPZ

<ESC> Exit menu

F1-Help F2-Edit mode

Bio-logic Systems Corp.

F3-Quick select



P100 Data

File#: 6220
Pt Name: Gibson, Stacy

Total group

intercept		-6.2036
	46.00	5.4924
	1.00	-0.7567
	0.00	0.0000
	1.60	1.7193
	4.23	0.9649

1.2163

3.3747

0.7714

Total Group: Probability of Explosivity

No medication

intercept		-8.0905
age	46.00	6.2008
sex	1.00	-0.7848
deltaf4	1.60	2.2756
alphaf3	0.79	-1.8733
alphaf4	0.79	1.8890
maxp100	4.23	1.0664

0.6831

1.9801

No Meds: 0.6644

Age	46.00
Sex	1.00
Meds	0.00
Deltaf4	39.70
Maxp100	4.23
Alphaf3	6.10
Alphaf4	6.10
Alphacz	7.80
Deltao2	20.20
Deltat6	16.50

On Medication

intercept		-3.6891
age	46.00	-0.9706
sex	1.00	6.0591
deltaf4	1.60	3.7135
alphacz	0.89	-1.9751
alphaf4	0.79	1.9253
deltao2	1.31	2.8252
deltat6	1.22	-3.7199
sex*deltao2	1.31	-2.1983

1.9701

7.1711

On Meds: 0.8776

1025

P200 Data

intercept		-0.3489	
sex	1.00	0.6282	
age	46.00	-0.0061	
meds	0.00	0.3597	
deltaf4	39.70	1.9192	
deltao1	21.20	-1.0375	
deltacz	34.80	-1.0488	
p50max	5.54	-0.1899	0.8516
p200max	1.52	0.1500	0.6419

0.4326

Total Group: Probability of Rumination

deltaf3	36.90
deltaf4	39.70
deltacz	34.80
deltao1	21.20
thetaf3	17.60
p100max	4.23
p200max	1.52
p50max	5.54
age	46.00
sex	1.00
meds	0.00

Theta/Beta Ratio: 1.65/1.00

Beta Cz	10.40
Theta Cz	17.20

No Medication

intercept		-8.0738
sex	1.00	0.7528
age	46.00	0.4767
deltaf4	1.60	2.2807
deltacz	1.54	-0.1726
p200max	1.52	0.6963
age*p200max	69.92	-0.0401

16.24207

#####

No Meds

0.15698

On Medication

intercept		1.7726
sex	1.00	0.6774
age	46.00	-0.1044
deltaf3	1.57	2.0495
deltao1	1.33	-1.9930
thetaf3	1.25	-1.1215
p100max	4.23	-0.1199
p200max	1.52	0.1570

-3.44955

0.03176

On Meds:

0.75490

Bank: 1
Time: 66.00

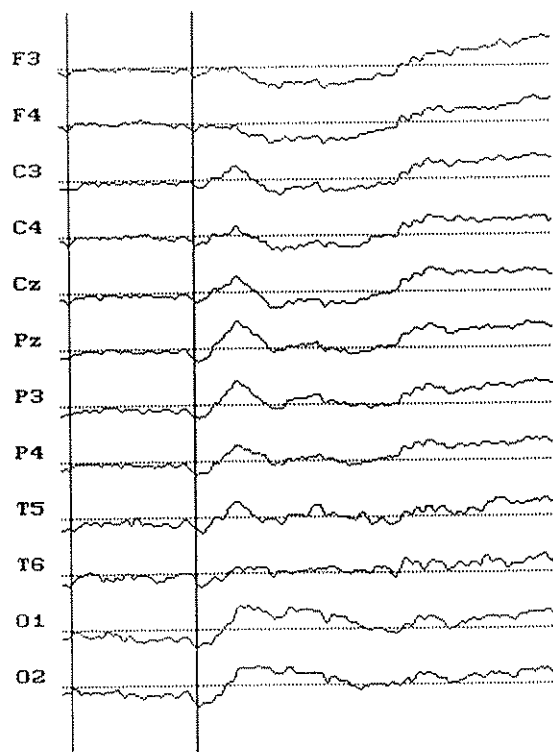
Scale: 8
Epoch: 256

Bio-logic®

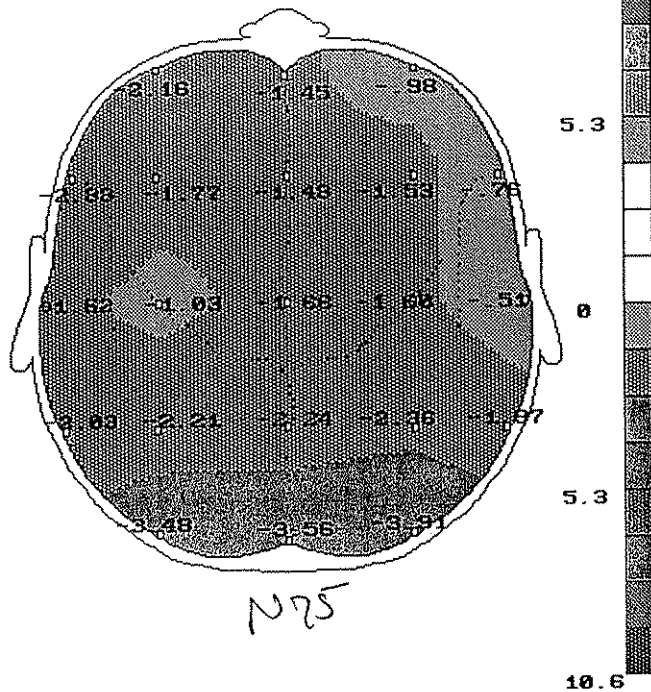
File:D:006220
Ctl.: +

View:Top

Rec.:1 10.6



UEP B\N RH ALERT



Data:EP

Bank: 1
Time: 66.00

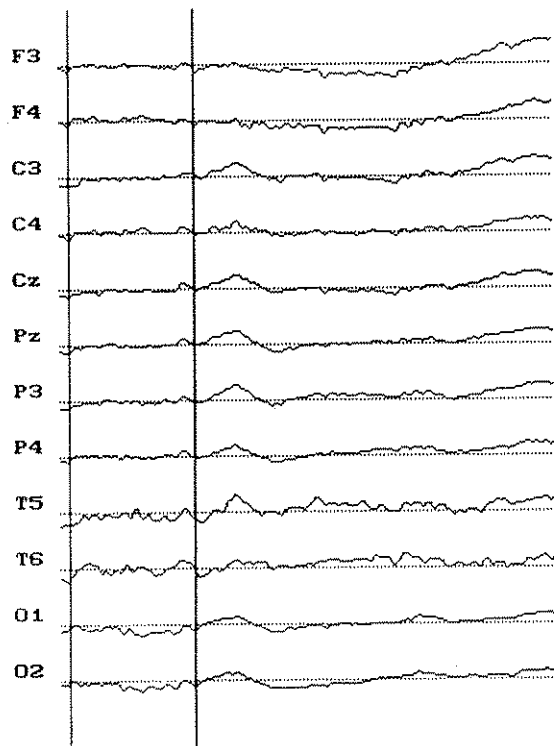
Scale: 1
Epoch: 256

Bio-logic®

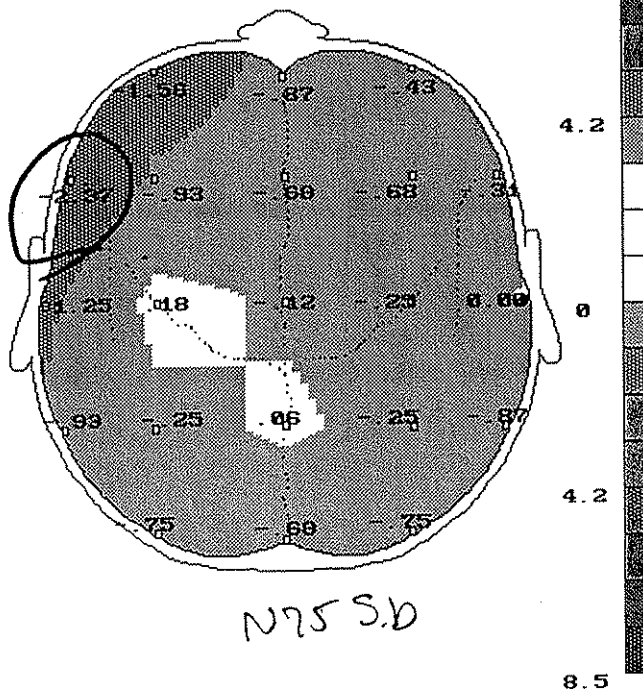
File:D:006220
Ctl.:000AAA +

View:Top

Rec.:1 8.5



UEP B\N RH ALERT



Data:EP

102-

Bank: 1
Time: 66.00

Scale: 8
Epoch: 256

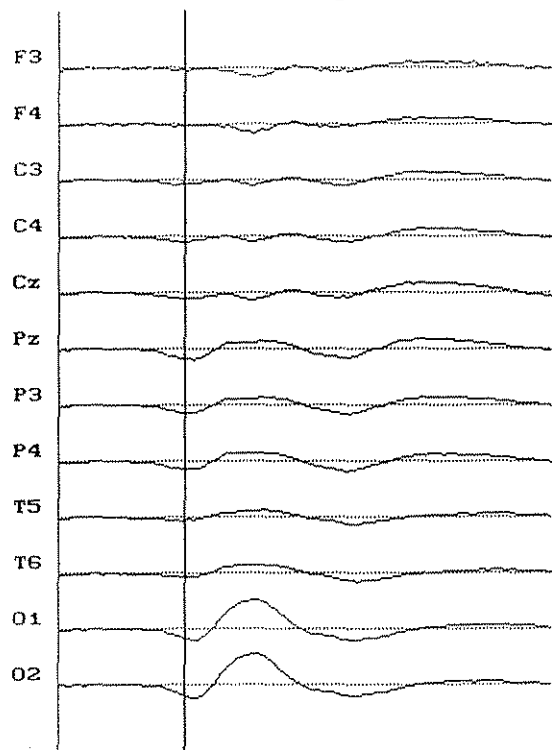
Bio-logic®

File: D:PU3148M

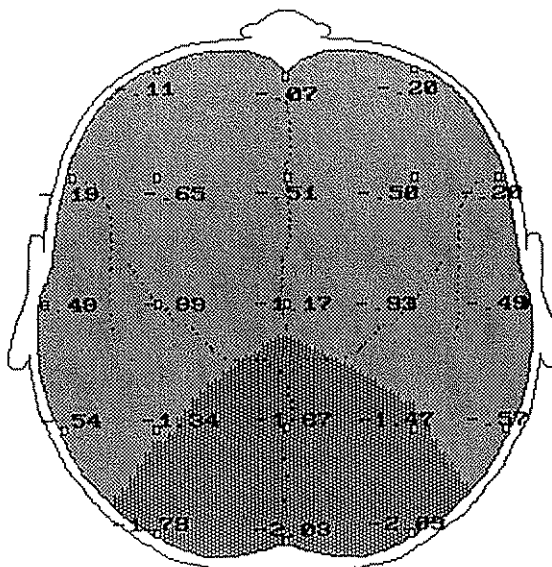
Ctl.:

View: Top

Rec.: 1



PATTERN VISUAL; 31-40 YRS.; MEAN



N75 Control.

Data: EP

Bank: 1
Time: 88.00

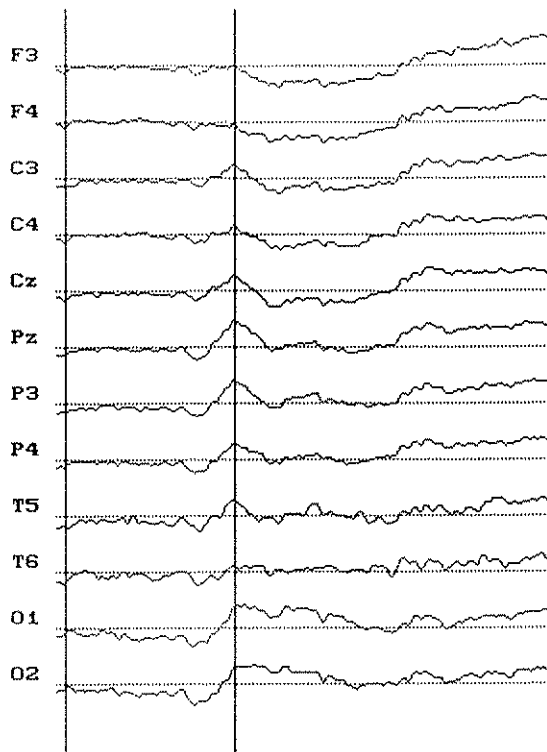
Scale: 8
Epoch: 256

Bio-logic®

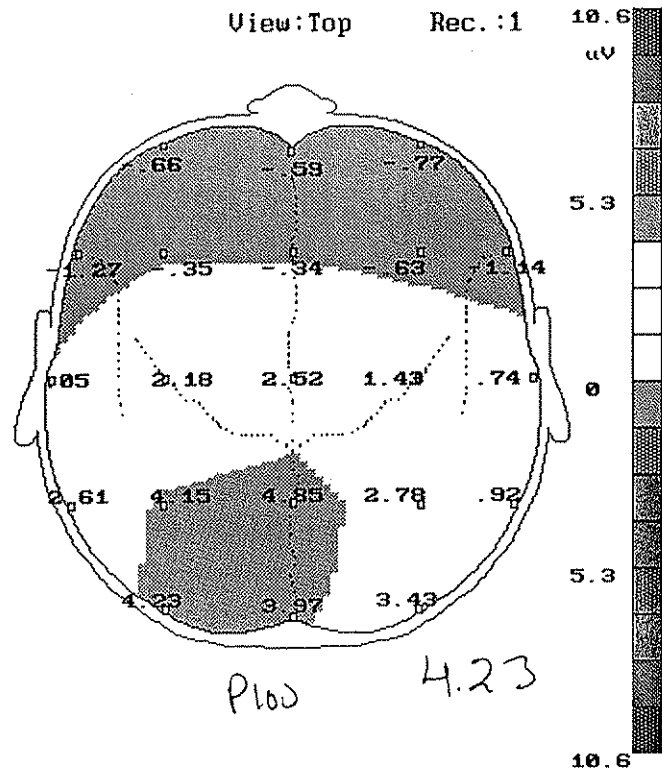
File:D:006220
Ctl.: +

View:Top

Rec.:1



UEP B\N E RH ALERT



Data:EP

Bank: 1
Time: 88.00

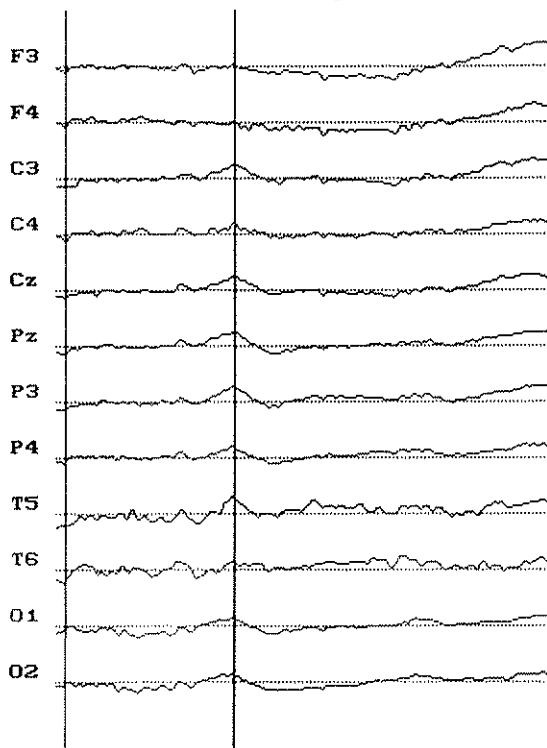
Scale: 1
Epoch: 256

Bio-logic®

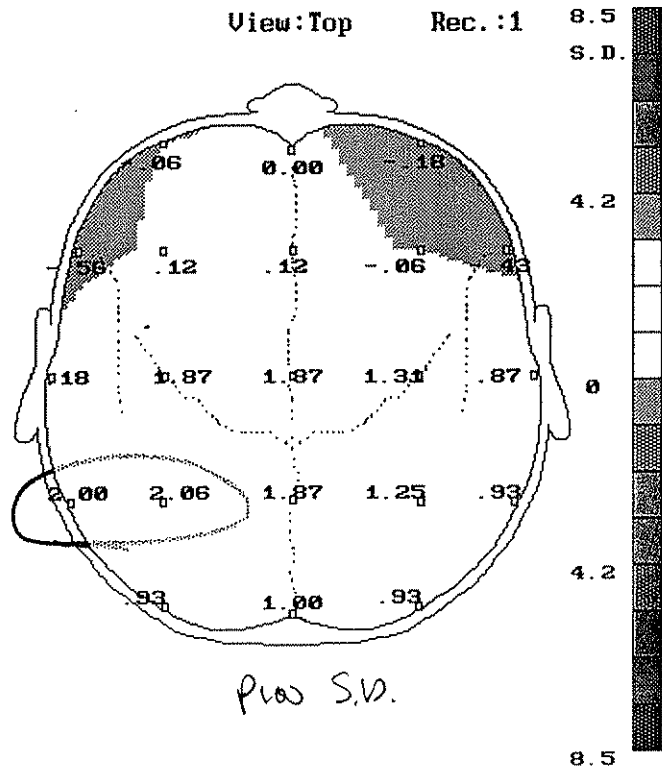
File:D:006220
Ctl.:000AAA +

View:Top

Rec.:1



UEP B\N E RH ALERT



Data:EP

1020

Bank: 1
Time: 88.00

Scale: 8
Epoch: 256

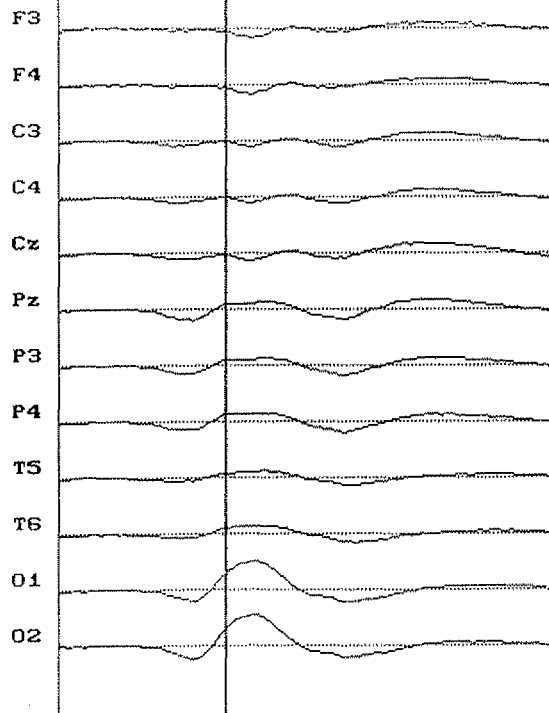
Bio-logic®

File: D:PU3148M

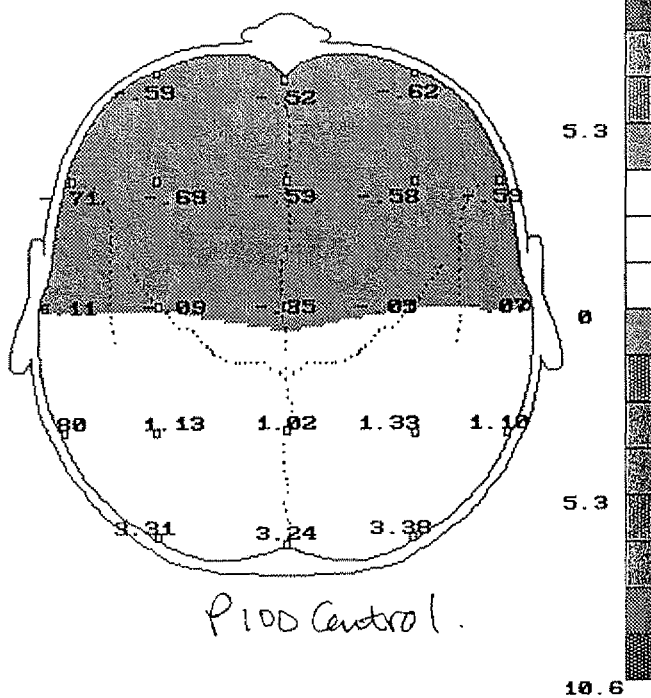
Ctl.: +

View: Top

Rec.: 1



PATTERN VISUAL; 31-40 YRS.; MEAN



P100 Control.

Data: EP

102

Bank: 1
Time: 224.00

Scale: 8
Epoch: 256

Bio-logic®

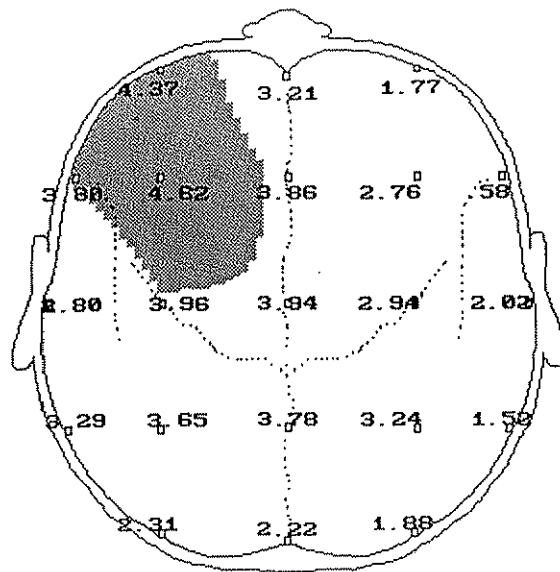
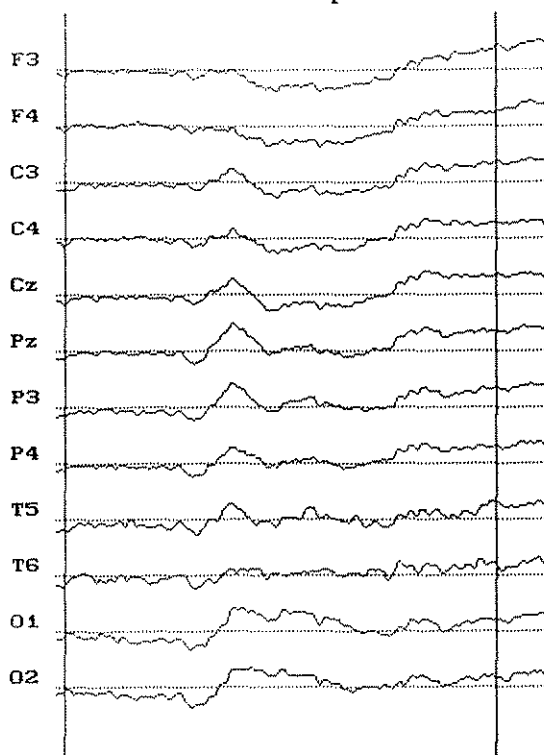
File:D:006228

Ctl.: +

View:Top

Rec.:1

10.6
uV



P200

10.6

UEP B-E RH ALERT

Data:EP

Bank: 1
Time: 224.00

Scale: 1
Epoch: 256

Bio-logic®

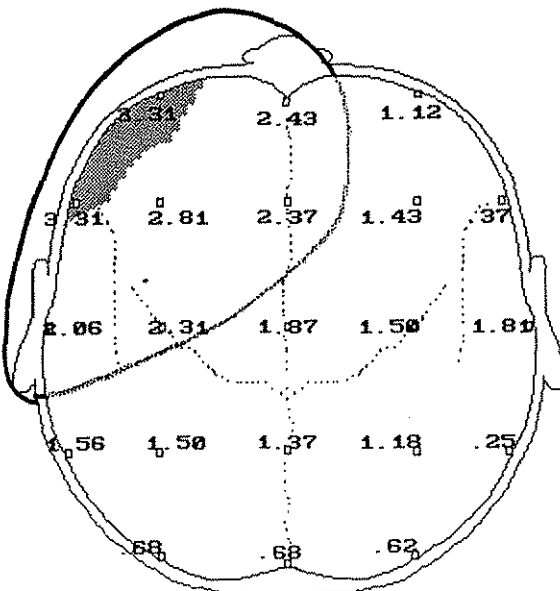
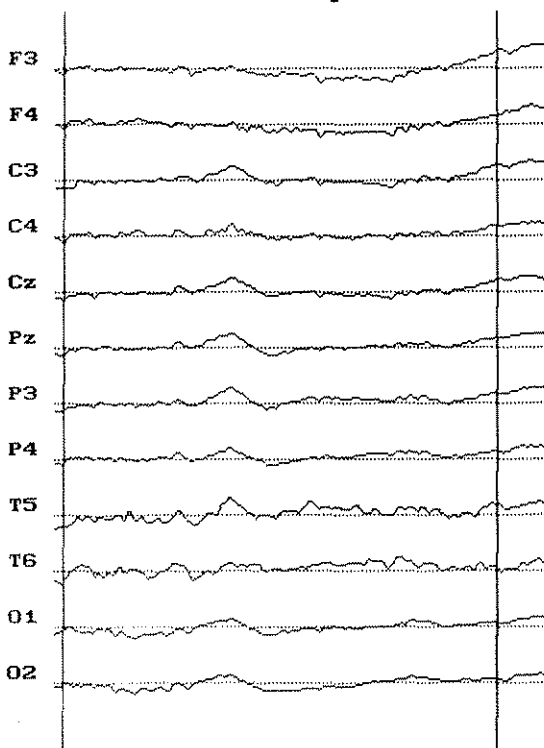
File:D:006228

Ctl.:000AAA +

View:Top

Rec.:1

8.5
S.D.



P200 S.D.

8.5

UEP B-E RH ALERT

Data:EP

Bank: 1
Time: 224.00

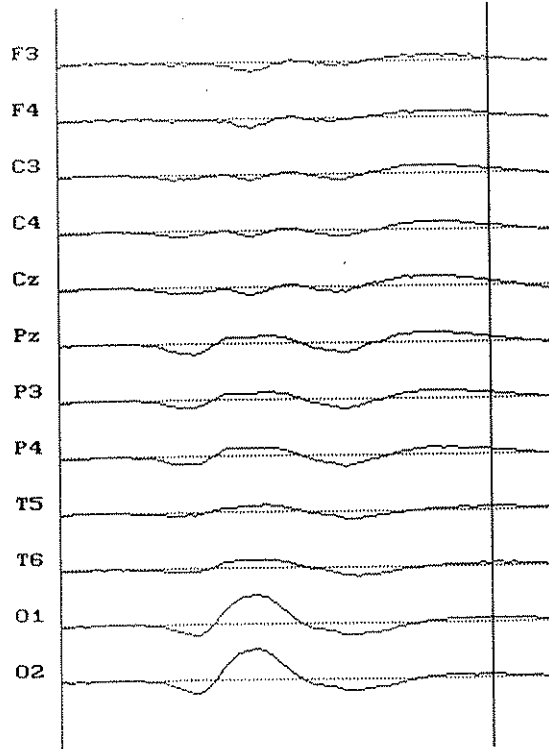
Scale: 8
Epoch: 256

Bio-logic®

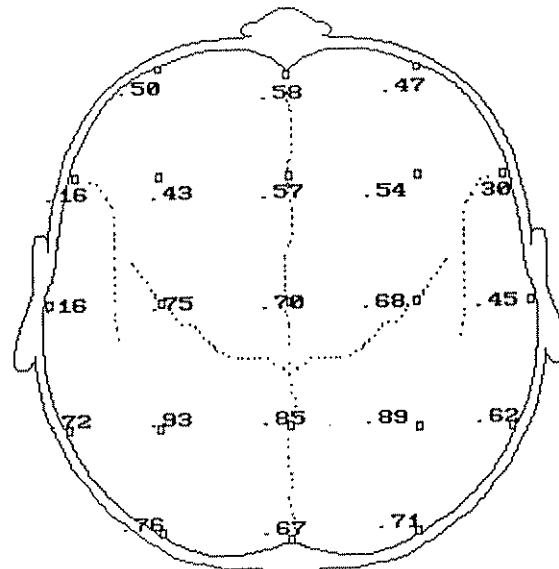
File: D:PU3140M
Ctl.: +

View: Top

Rec.: 1

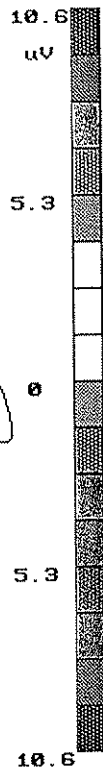


PATTERN VISUAL; 31-40 YRS.; MEAN



P 200 Control.

Data: EP



102

Bank: 1
Time: 64.00

Scale: 8
Epoch: 512

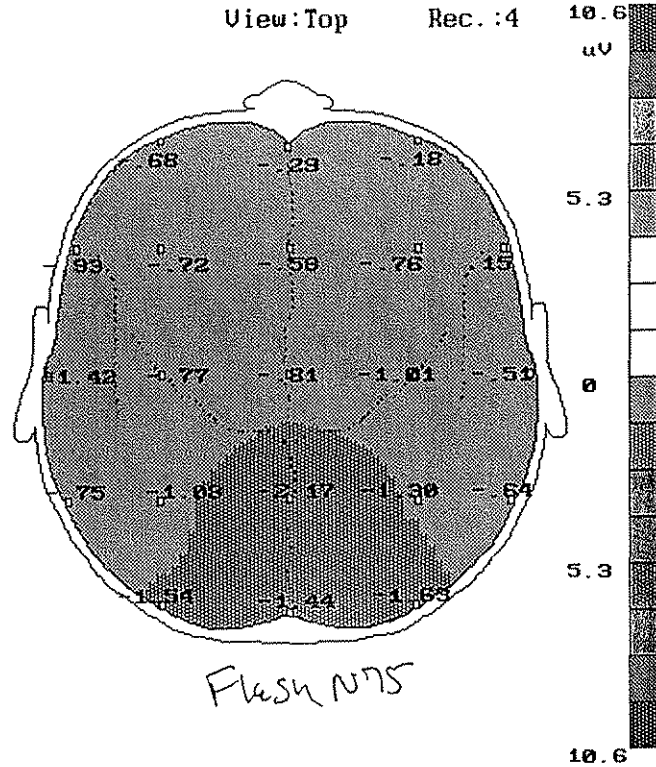
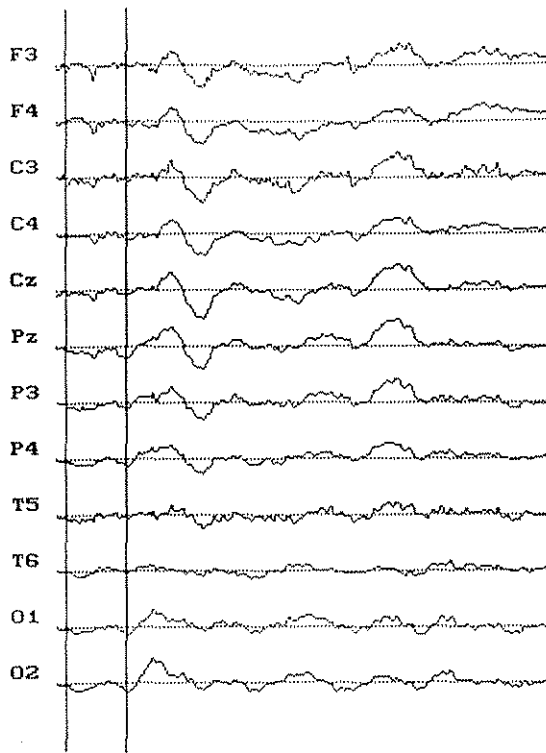
Bio-logic®

File:D:006220

Ctl.: +

View:Top

Rec.:4



UEP FLASH B\N RH ALERT

Data:EP

Bank: 1
Time: 64.00

Scale: 1
Epoch: 512

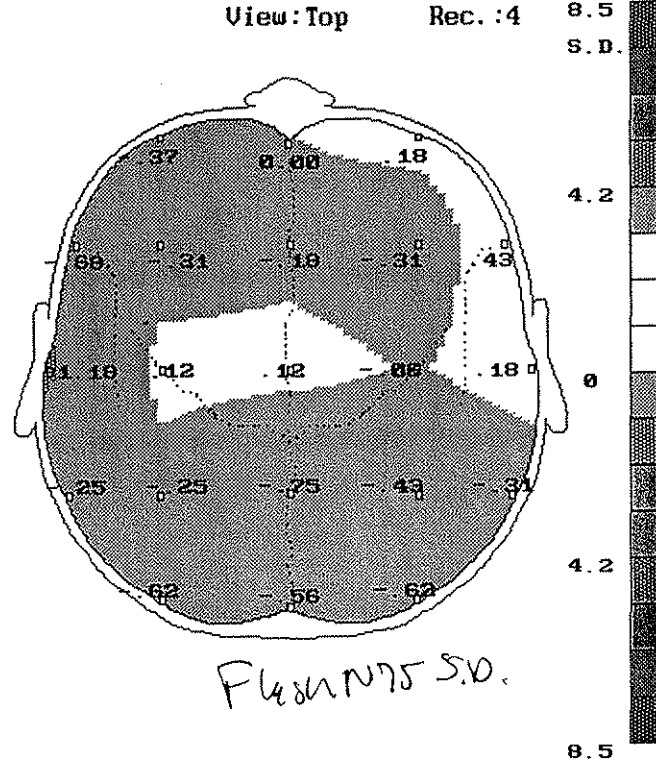
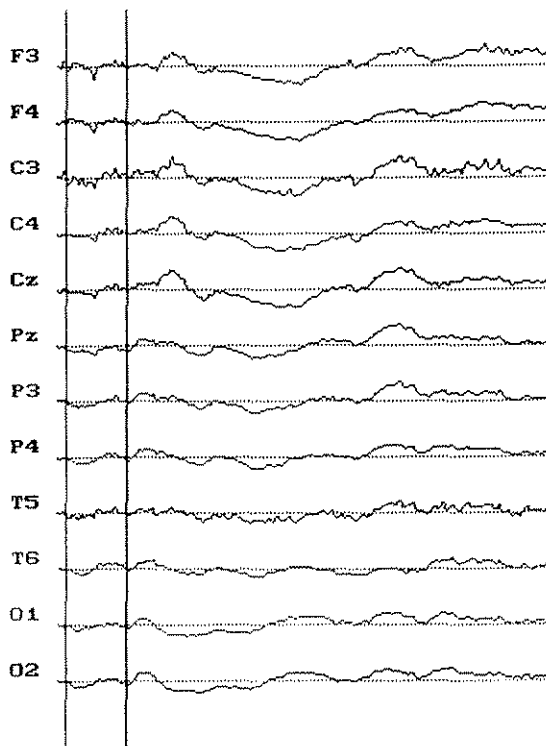
Bio-logic®

File:D:006220

Ctl.:001AAA +

View:Top

Rec.:4



UEP FLASH B\N RH ALERT

Data:EP

Bank: 1
Time: 64.00

Scale: 4
Epoch: 512

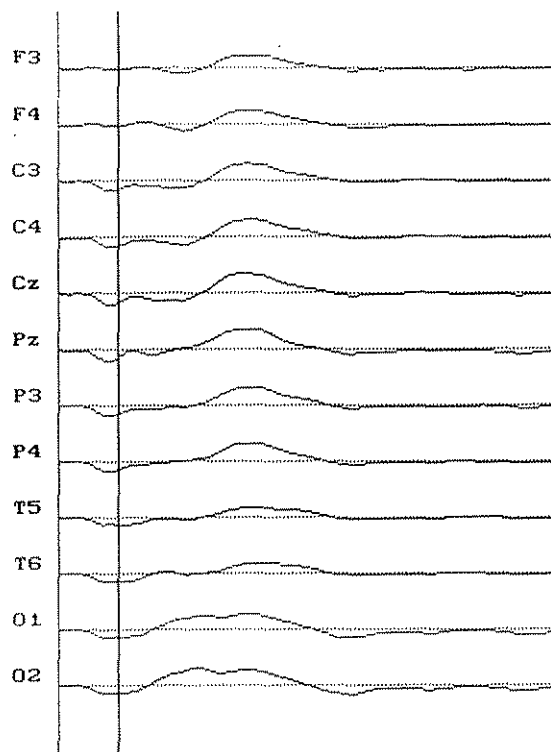
Bio-logic®

File: D:FU3140M

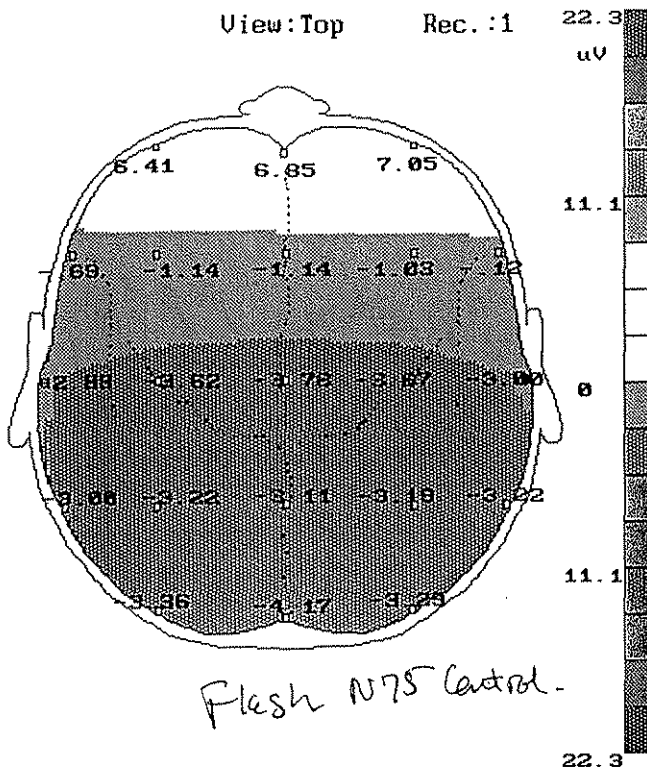
Ctl.: 8

View: Top

Rec.: 1



FLASH VISUAL; 31-40 YEARS; MEAN



Data: EP

1036

Bank: 1
Time: 90.00

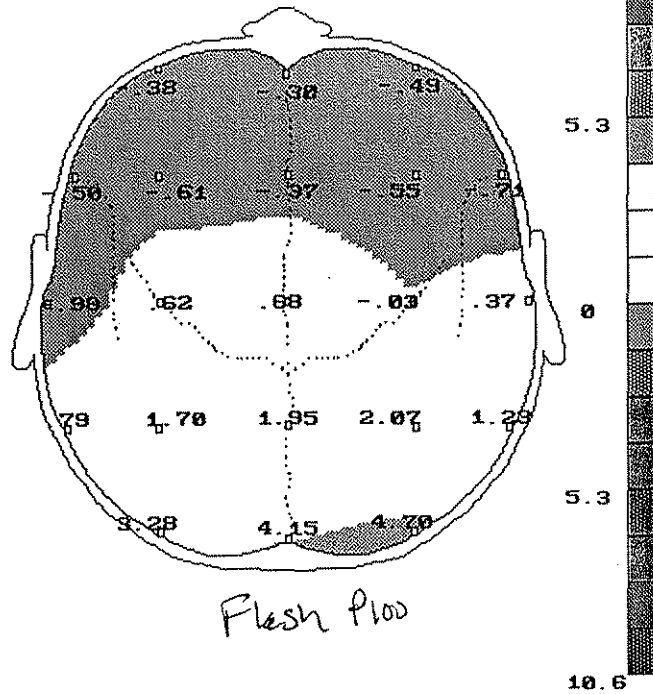
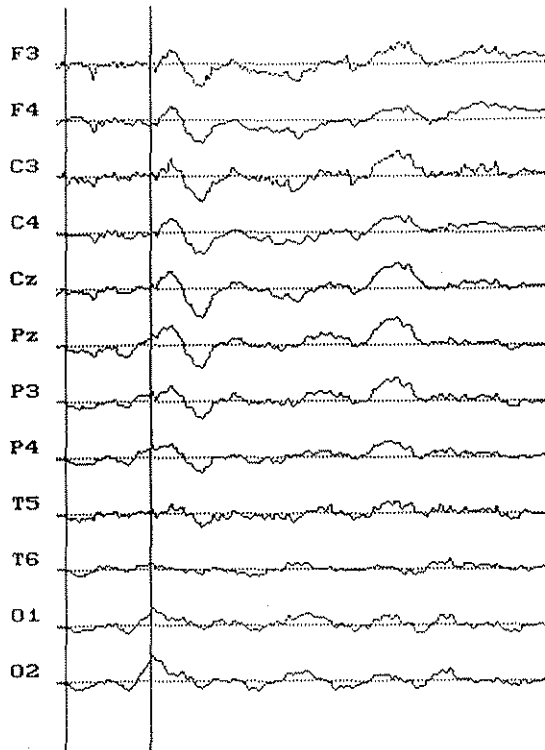
Scale: 8
Epoch: 512

Bio-logic®

File:D:006220
Ctl.: 9

View:Top

Rec.:4



UEP FLASH B\E RH ALERT

Data:EP

Bank: 1
Time: 90.00

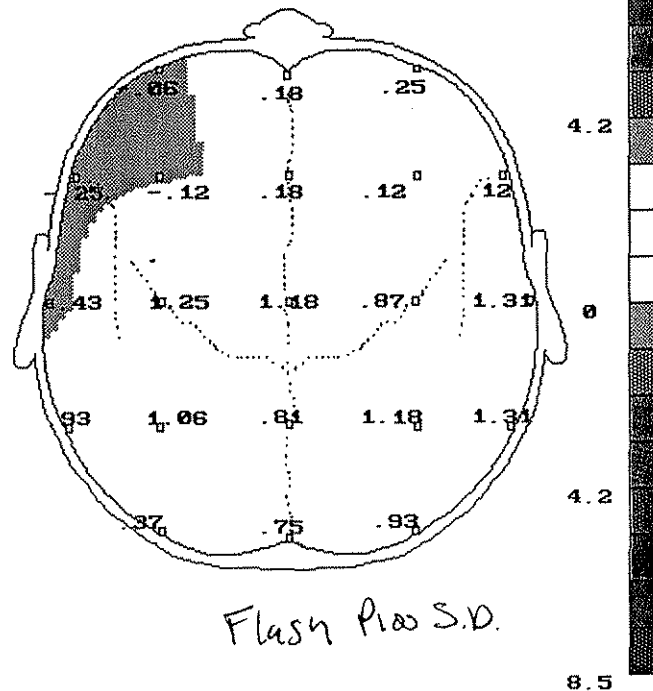
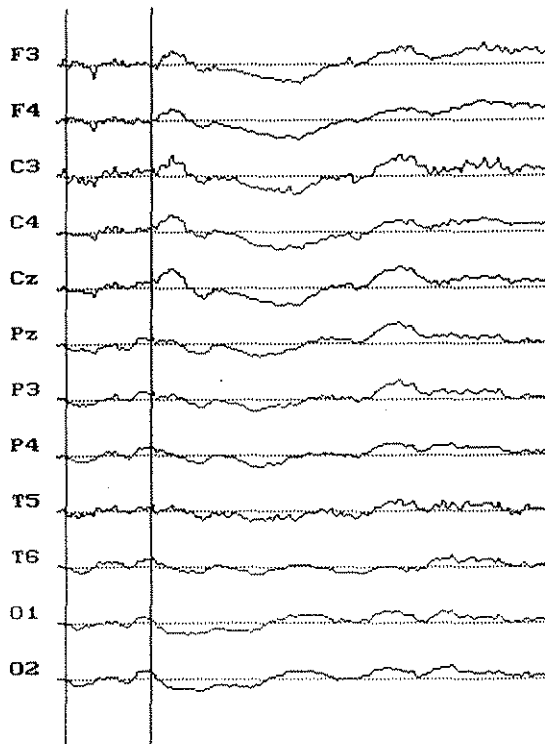
Scale: 1
Epoch: 512

Bio-logic®

File:D:006220
Ctl.:001AAA

View:Top

Rec.:4



UEP FLASH B\E RH ALERT

Data:EP

1030

Bank: 1
Time: 90.00

Scale: 4
Epoch: 512

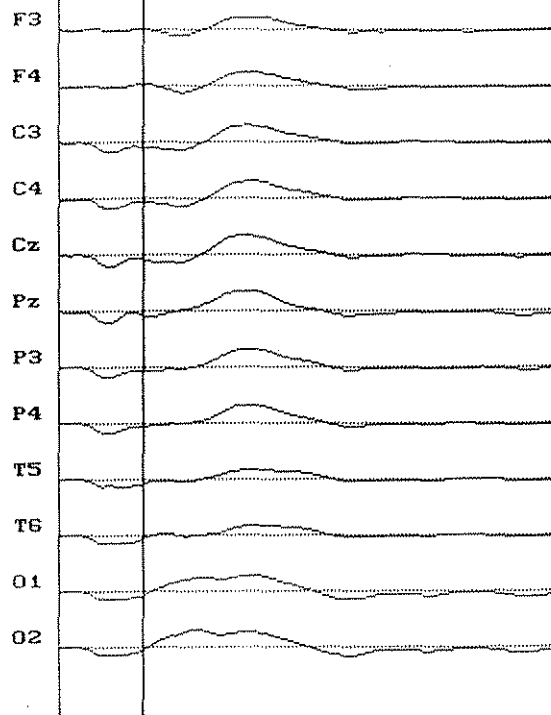
Bio-logic®

File: D:FV3140M

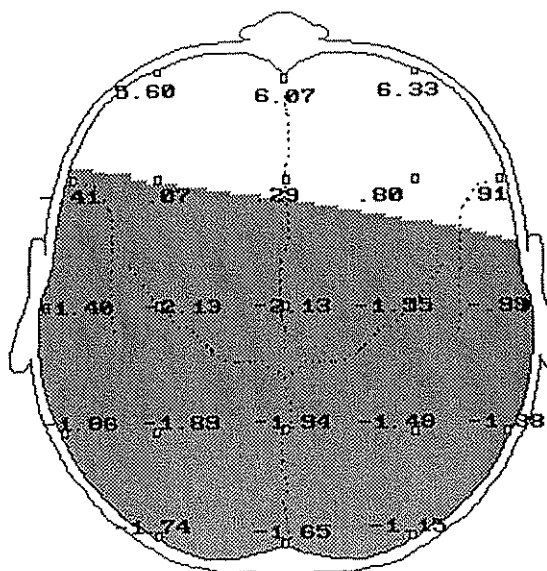
Ctl.: 10

View: Top

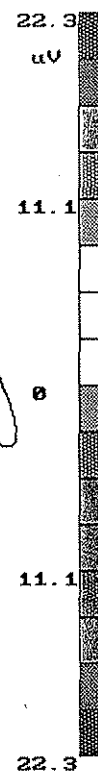
Rec.: 1



FLASH VISUAL; 31-40 YEARS; MEAN



Data: EP



Flash Plus Central.

Bank: 1
Time: 176.00

Scale: 8
Epoch: 512

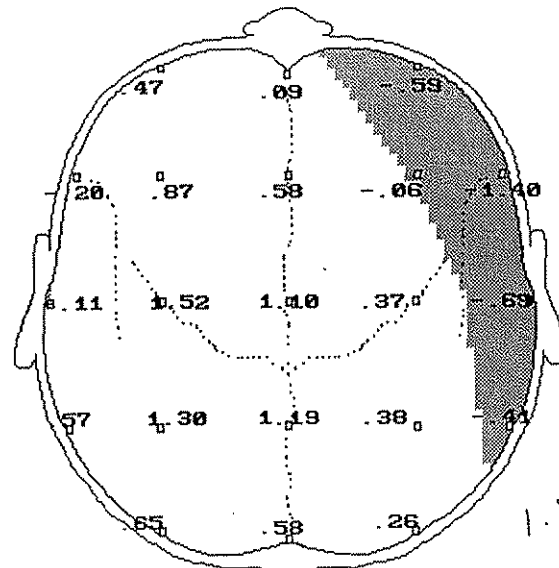
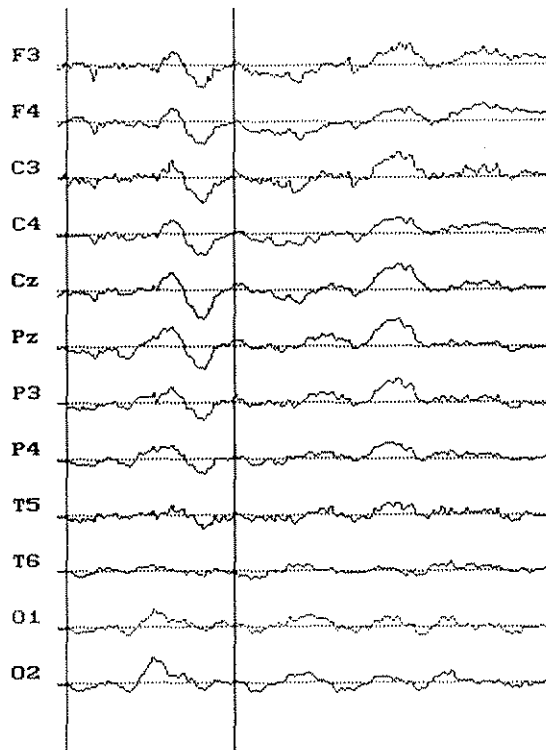
Bio-logic®

File:D:006220
Ct1.: +

View:Top

Rec.:4

10.6
uV



Flash P200

UEP FLASH B\E RH ALERT

Data:EP

Bank: 1
Time: 176.00

Scale: 1
Epoch: 512

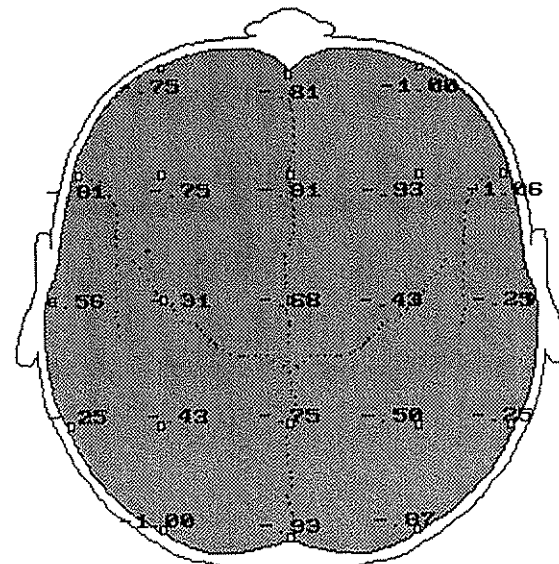
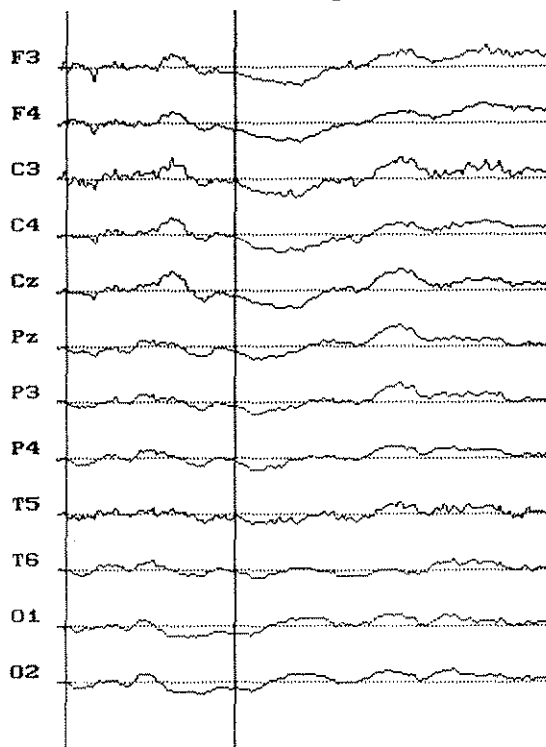
Bio-logic®

File:D:006220
Ct1.:001AAA +

View:Top

Rec.:4

8.5
S.D.



Flash P200 S.b.

UEP FLASH B\E RH ALERT

Data:EP

Bank: 1
Time: 176.00

Scale: 4
Epoch: 512

Bio-logic®

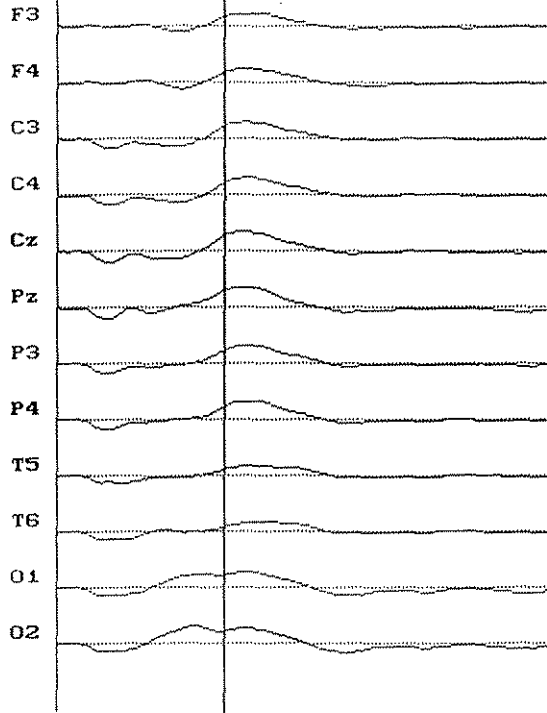
File: D:F03140M

12

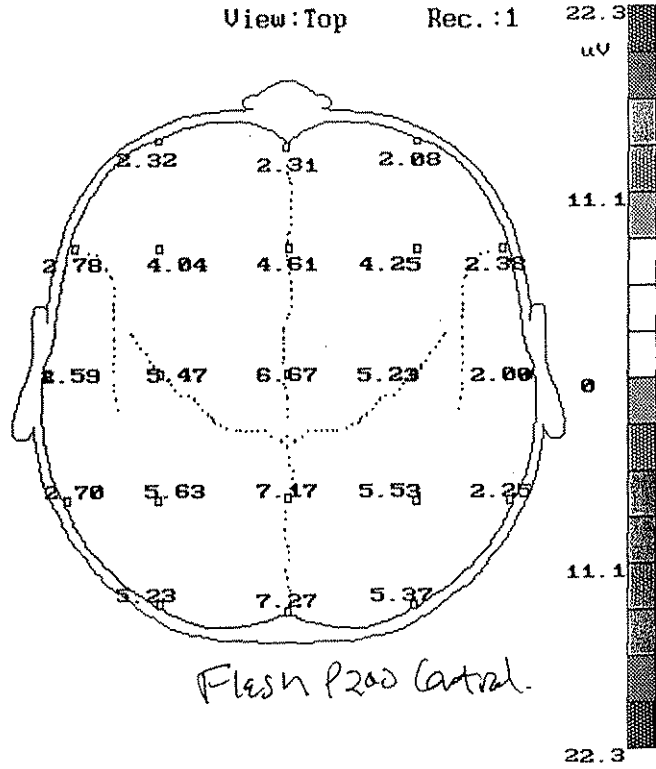
Ctl.:

View: Top

Rec.: 1



FLASH VISUAL; 31-40 YEARS; MEAN



Flash P200 Control.

Data: EP

Bank: 1
Time: 42.00

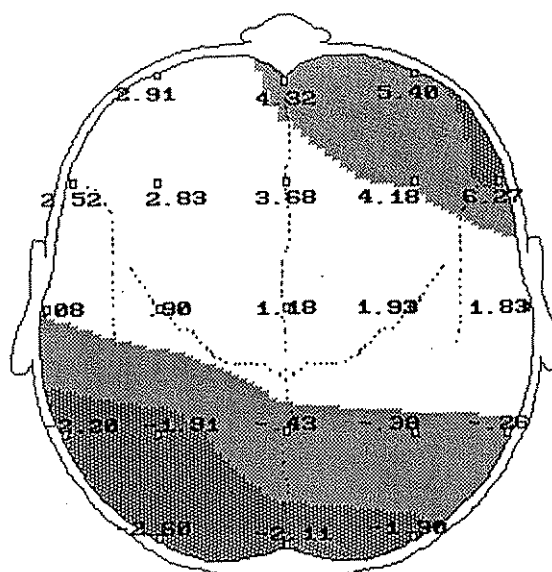
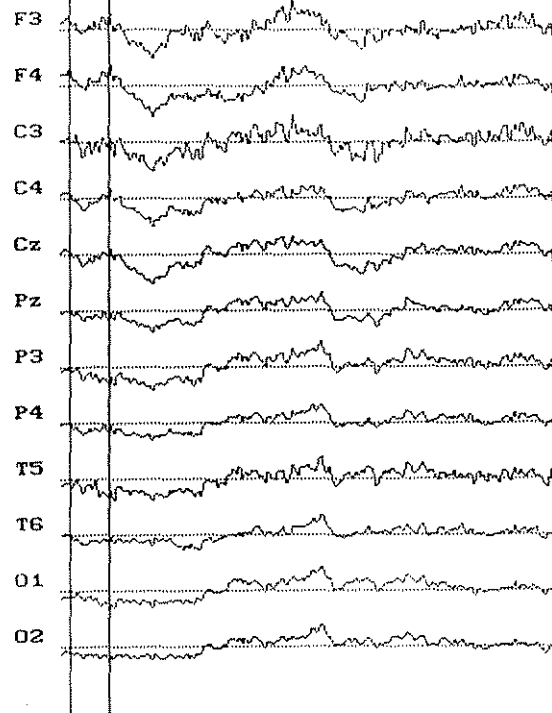
Scale: 8
Epoch: 512

Bio-logic®

File:D:306220
Ctl.: +

View:Top

Rec.:1



Fast psi

AEP P300 RH ALERT CT CORR

Data:EP

Bank: 1
Time: 42.00

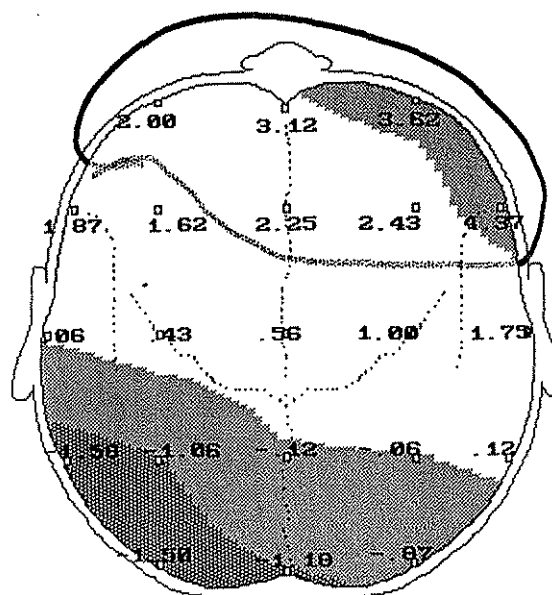
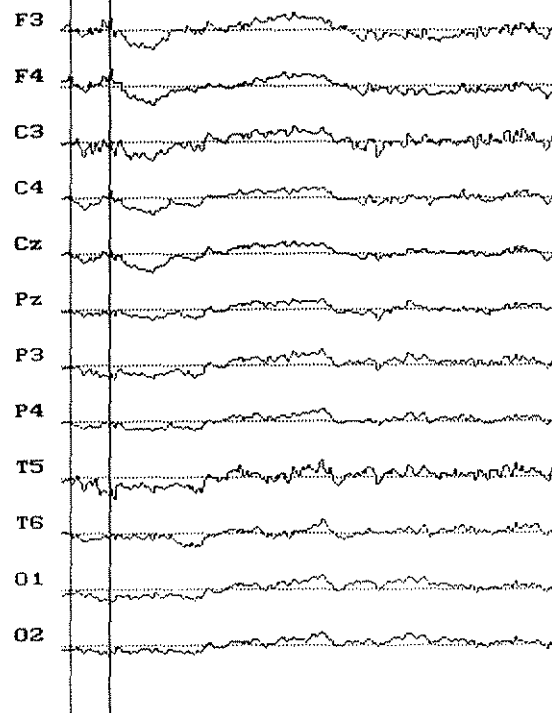
Scale: 1
Epoch: 512

Bio-logic®

File:D:306220
Ctl.:311AAA +

View:Top

Rec.:1



Fast psi OS.V.

AEP P300 RH ALERT CT CORR

Data:EP

Bank: 1
Time: 42.00

Scale: 8
Epoch: 512

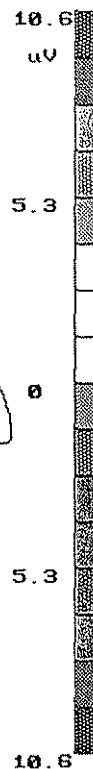
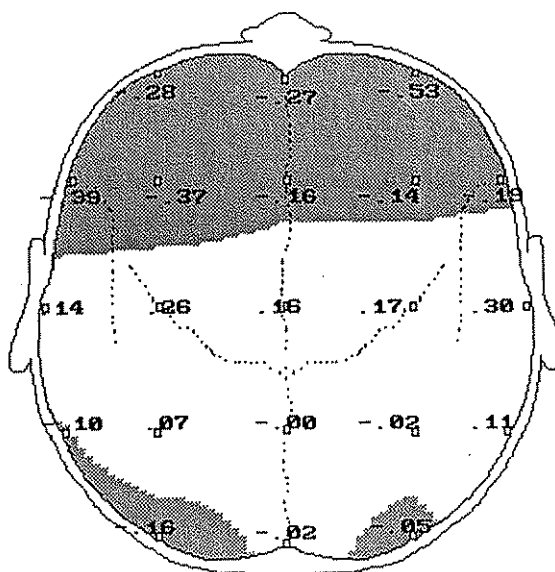
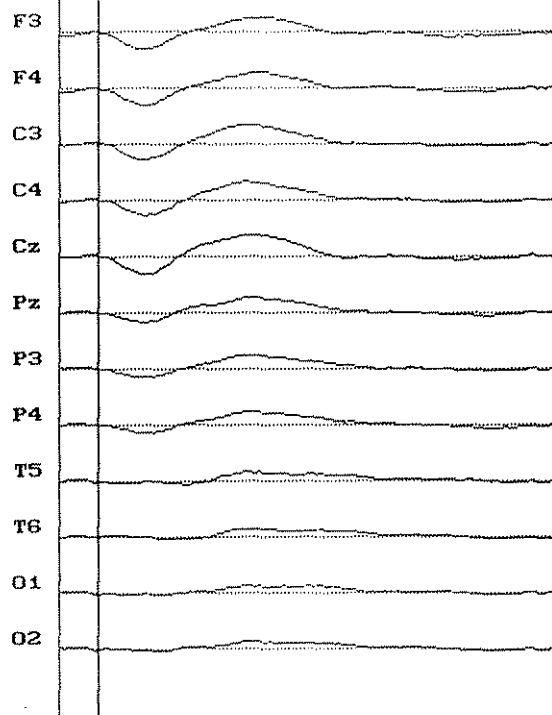
Bio-logic®

File: D:PF3140M
Ctl.: +

14

View: Top

Rec.: 1



Fast PSD Control -

P300, BANK 1; 31-40 YRS.; MEAN

Data: EP

101

Bank: 1
Time: 86.00

Scale: 8
Epoch: 512

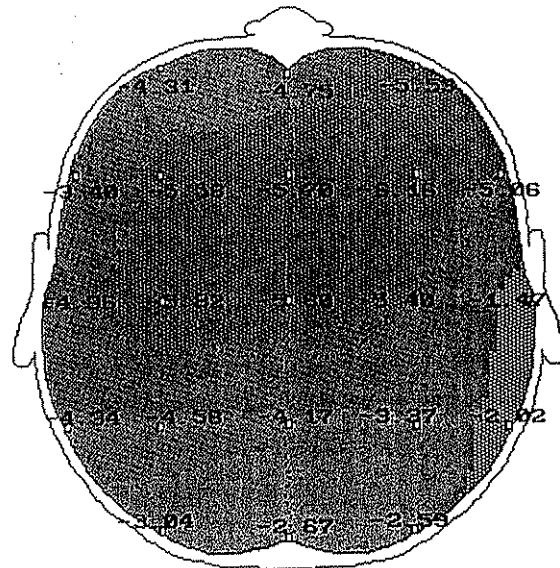
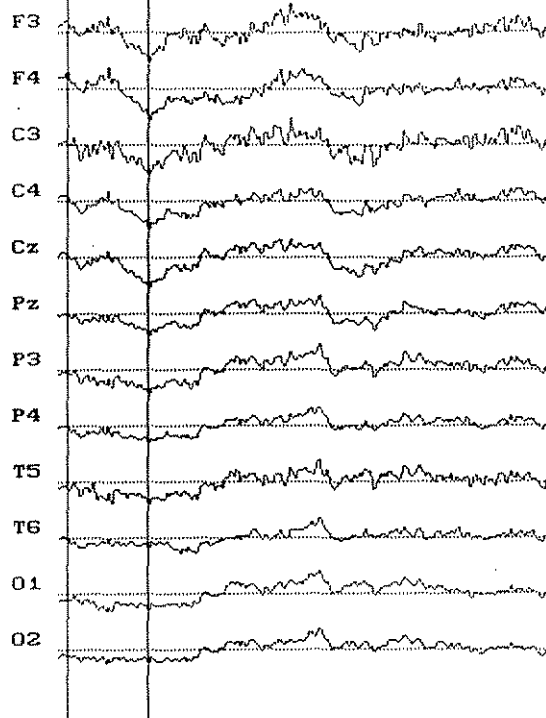
Bio-logic®

File:D:306220
Ctl.: +

15

View:Top

Rec.:1 10.6



Fast NW

AEP P300 RH ALERT CT CORR

Data:EP

Bank: 1
Time: 86.00

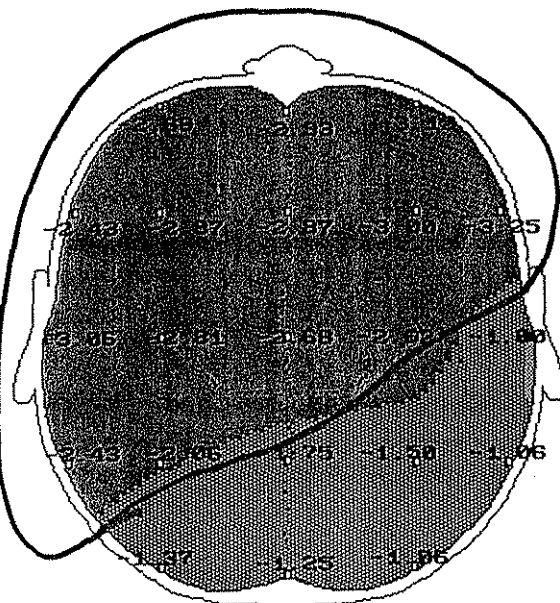
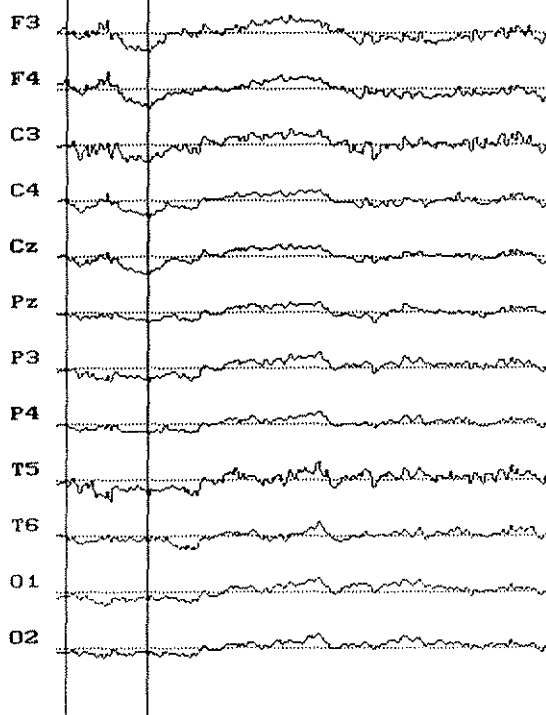
Scale: 1
Epoch: 512

Bio-logic®

File:D:306220
Ctl.: 311AAA

View:Top

Rec.:1 8.5



Fast NW SD.

AEP P300 RH ALERT CT CORR

Data:EP

Bank: 1
Time: 86.00

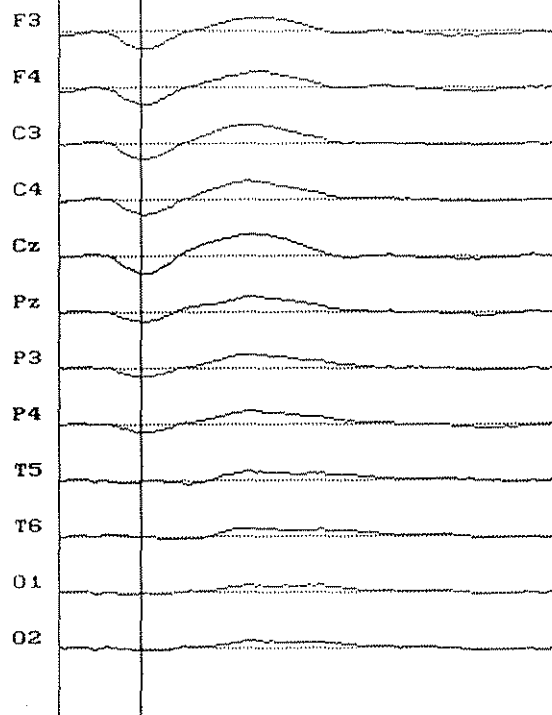
Scale: 8
Epoch: 512

Bio-logic®

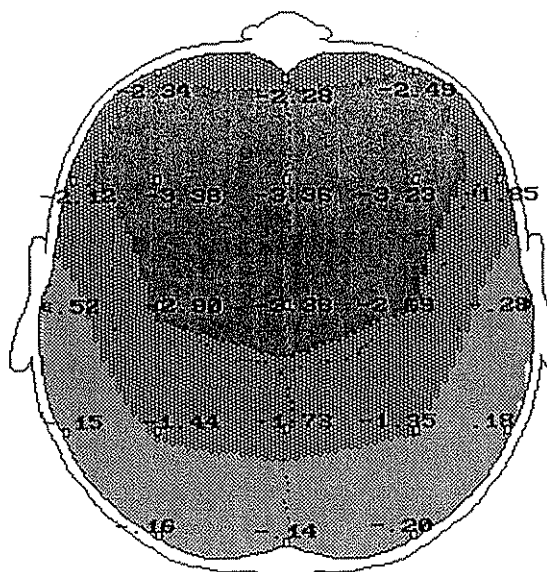
File: D:PF3140M
Ctl.: 16

View: Top

Rec.: 1



P300, BANK 1; 31-40 YRS.; MEAN



Fast N100 Control.

Data: EP



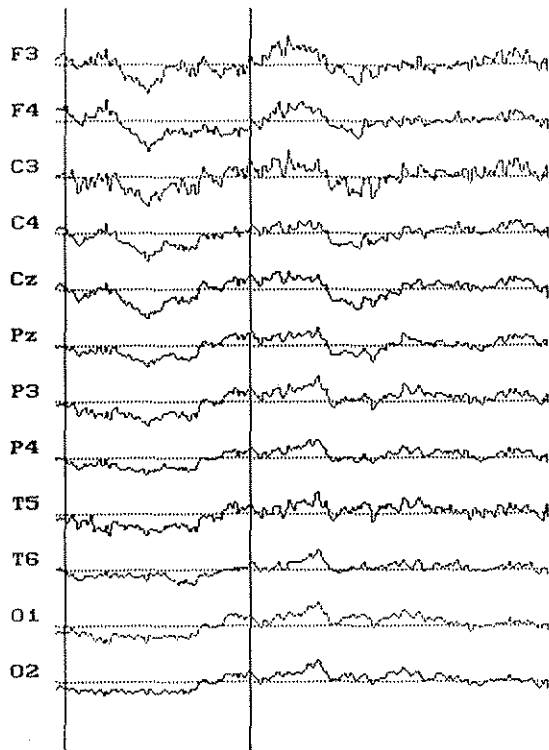
Bank: 1
Time: 194.00

Scale: 8
Epoch: 512

Bio-logic®

File:D:306220
Ct1.: +

17

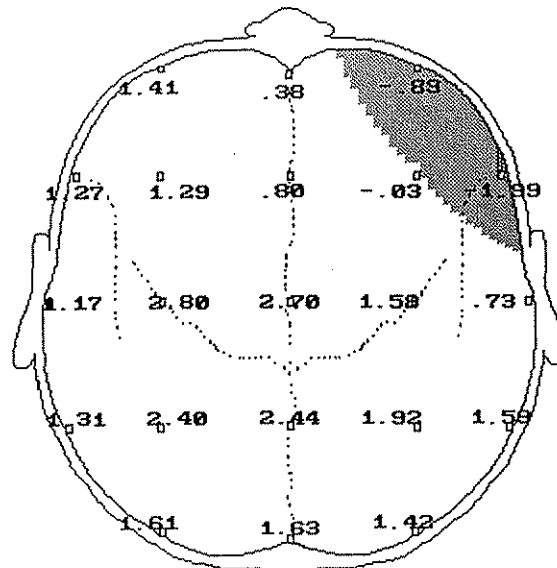


View:Top

Rec.:1

10.6

uV



5.3

5.3

10.6

Fast P200

AEP P300 RH ALERT CT CORR

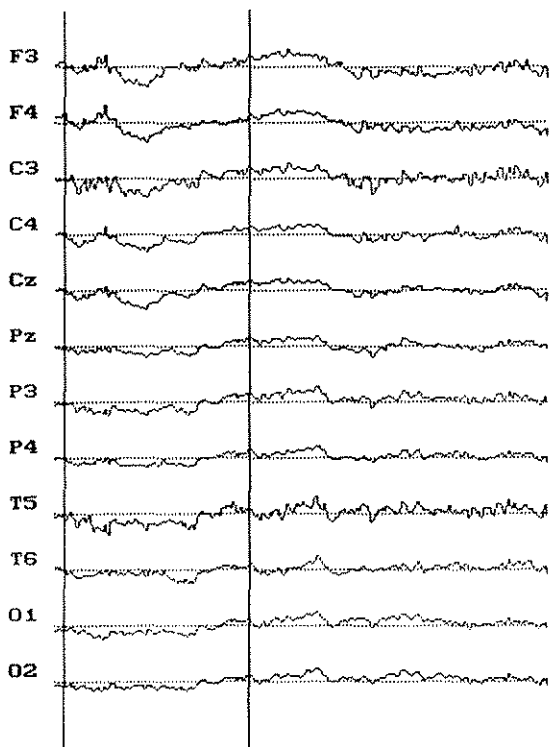
Data:EP

Bank: 1
Time: 194.00

Scale: 1
Epoch: 512

Bio-logic®

File:D:306220
Ct1.:311AAA +

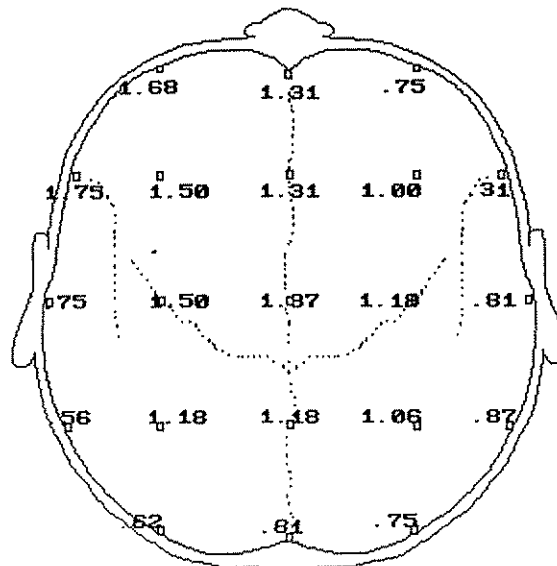


View:Top

Rec.:1

8.5

S.D.



4.2

4.2

8.5

Fast P200 S.D.

AEP P300 RH ALERT CT CORR

Data:EP

100

Bank: 1
Time: 194.00

Scale: 8
Epoch: 512

Bio-logic®

File: D:PF3140M

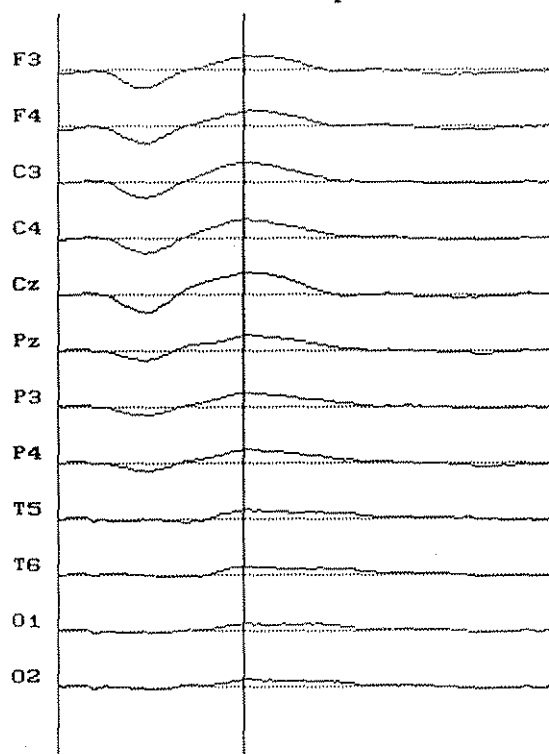
Ctl.:

View: Top

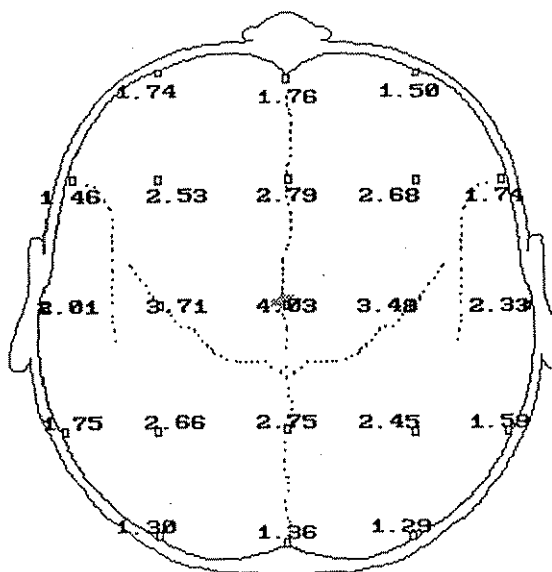
Rec.: 1

10.6

uV



P300, BANK 1; 31-40 YRS.; MEAN



Fast P200 Control.

Data: EP

10.6

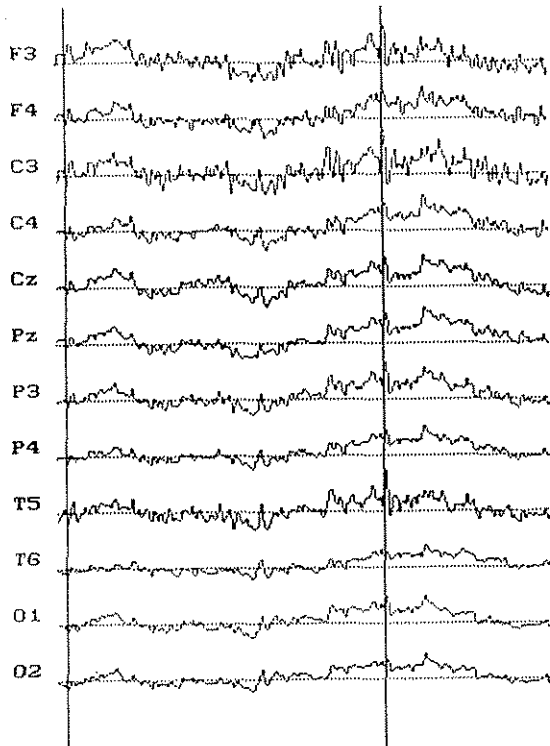
Bank: 2
Time: 330.00

Scale: 4
Epoch: 512

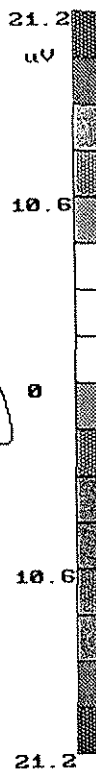
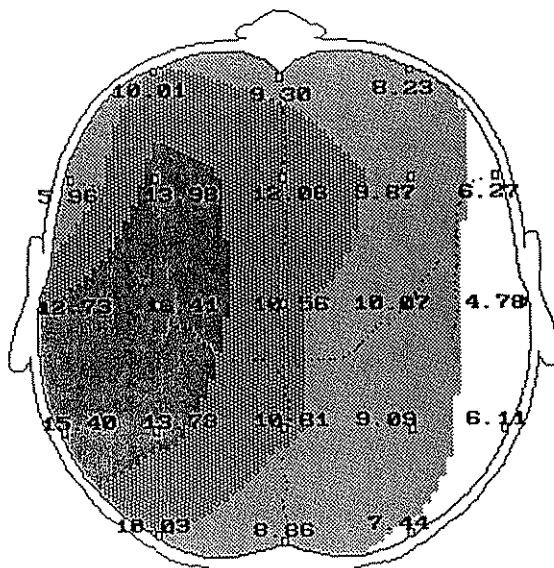
Bio-logic®

File: D:306220
Ctl.:
Rec.: 1

19



View: Top



Fast P300

AEP P300 RH ALERT CT CORR

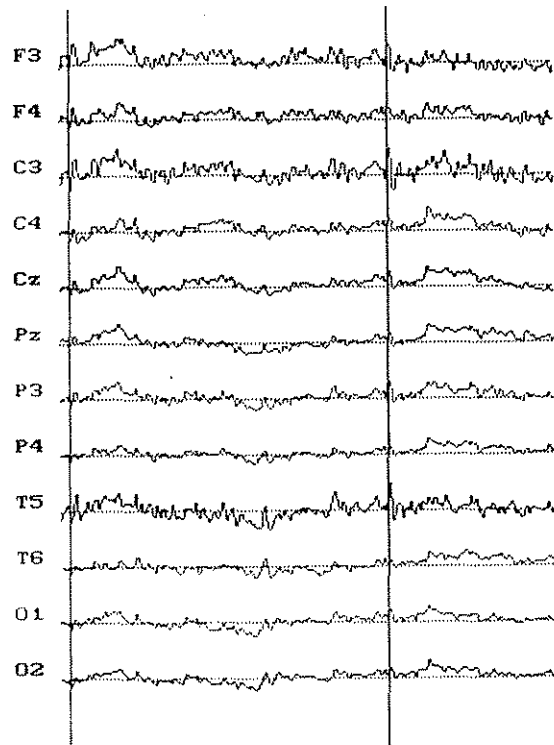
Data: EP

Bank: 2
Time: 330.00

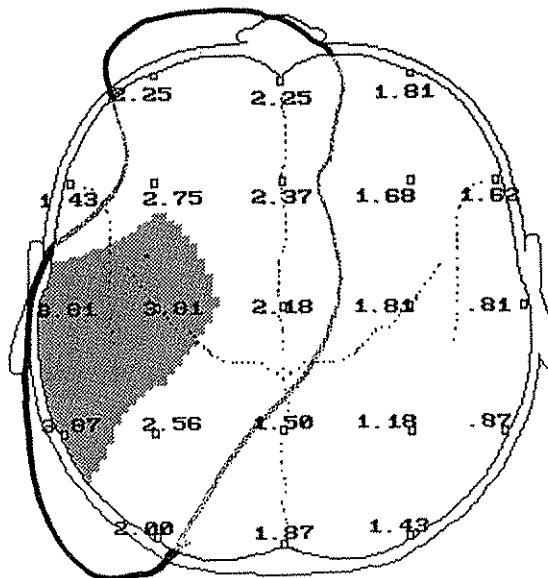
Scale: 1
Epoch: 512

Bio-logic®

File: D:306220
Ctl.: 312AAA



View: Top



Fast P300 S.P.

AEP P300 RH ALERT CT CORR

Data: EP

102

Bank: 1
Time: 330.00

Scale: 4
Epoch: 512

Bio-logic®

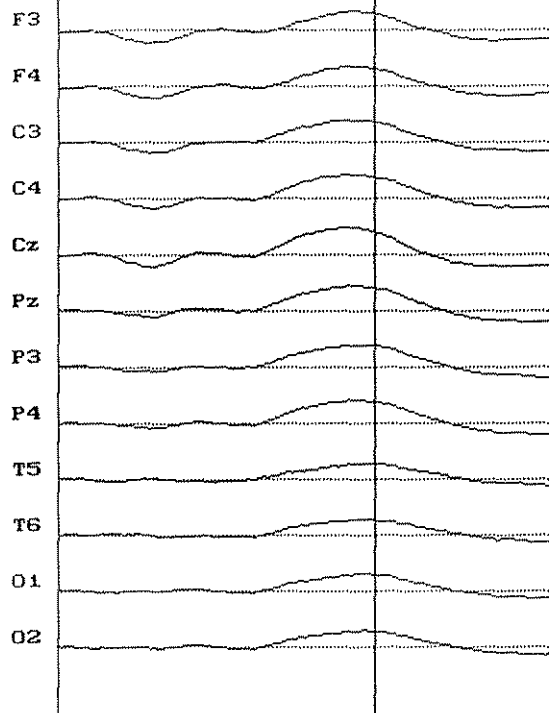
File: D:P33140M

Ctl.: +

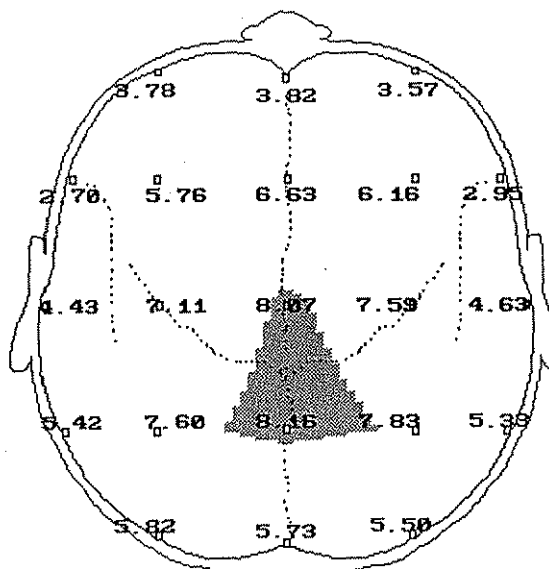
View: Top

Rec.: 1

21.2



P300, BANK 2; 31-40 YRS.; MEAN



Fast P300 Control.

Data: EP

uV

10.6

0

10.6

21.2

100

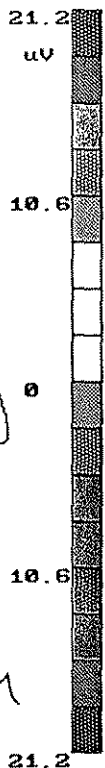
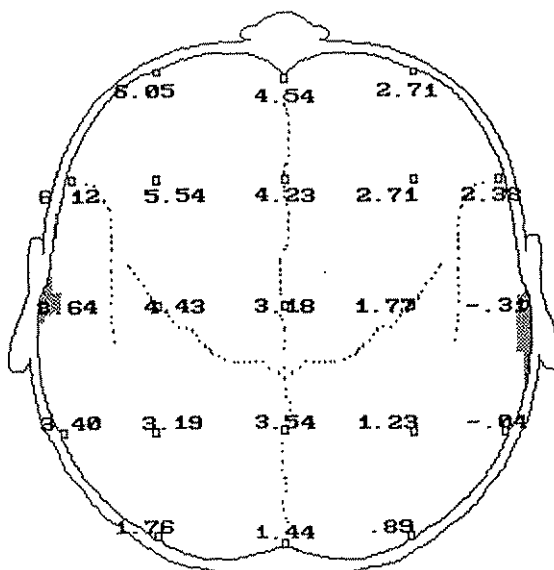
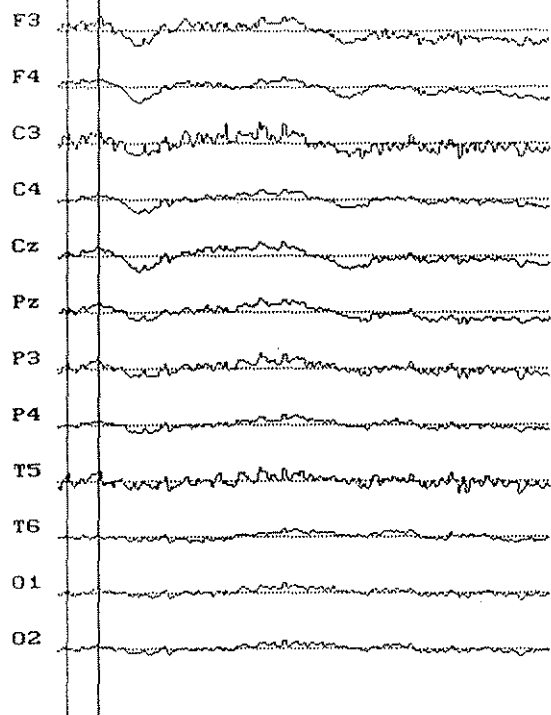
Bank: 1 Scale: 4
Time: 34.00 Epoch: 512

Bio-logic®

File: D:306220
Ctl.: + 21

View: Top

Rec.: 2 21.2



Normal PSD 5.54

AEP P300 RH ALERT CT CORR

Data: EP

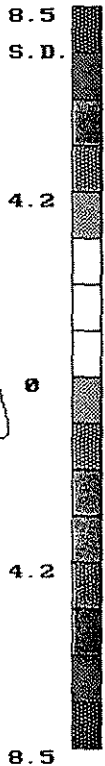
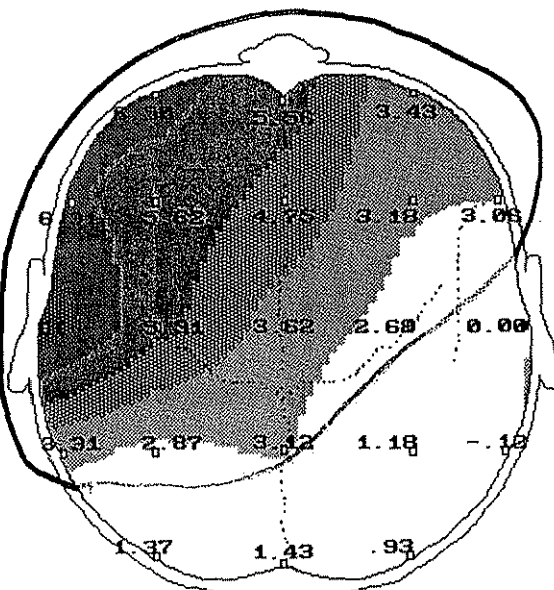
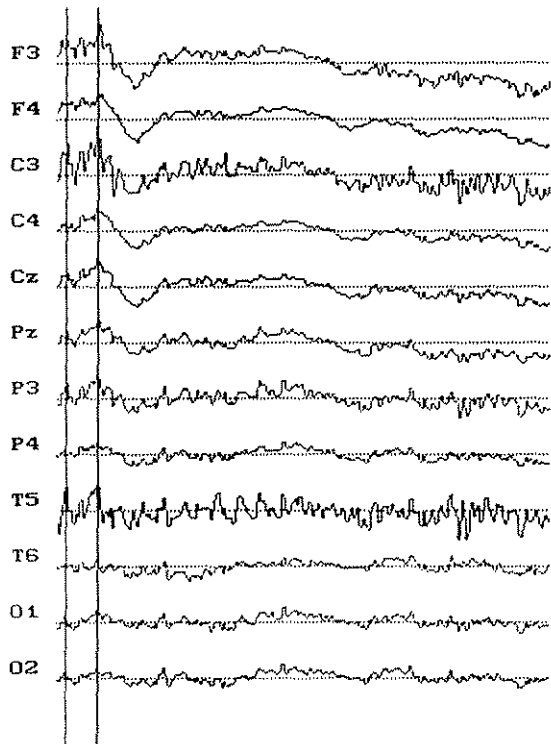
Bank: 1 Scale: 1
Time: 34.00 Epoch: 512

Bio-logic®

File: D:306220
Ctl.: 321AAA +

View: Top

Rec.: 2 8.5



Normal PSD S.D.

AEP P300 RH ALERT CT CORR

Data: EP

Bank: 1 Scale: 1
Time: 34.00 Epoch: 512

Bio-logic®

File: D:306220
Ctl.: 321AAA +

104

Bank: 1
Time: 34.00

Scale: 8
Epoch: 512

Bio-logic®

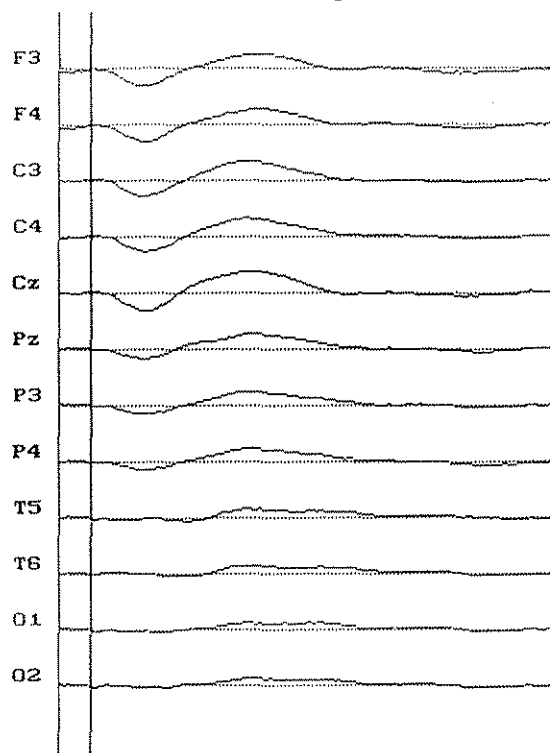
File: D:PF3140M
Ctl.: +

22

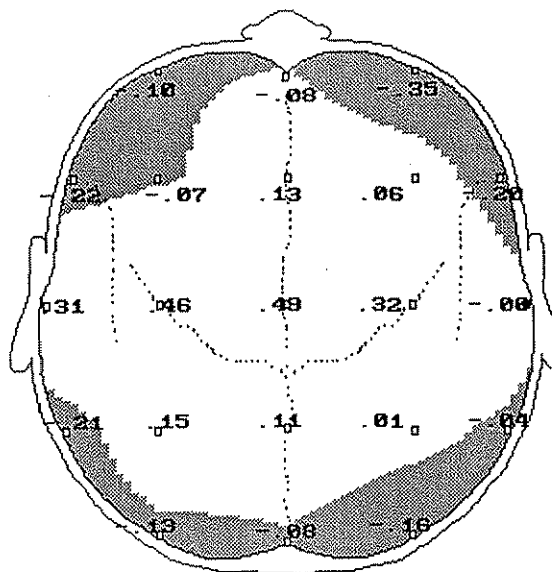
View: Top

Rec.: 1

10.6
uV



P300, BANK 1; 31-40 YRS.; MEAN



Normal P300 Control.

Data: EP

1040

Bank: 1
Time: 74.00

Scale: 4
Epoch: 512

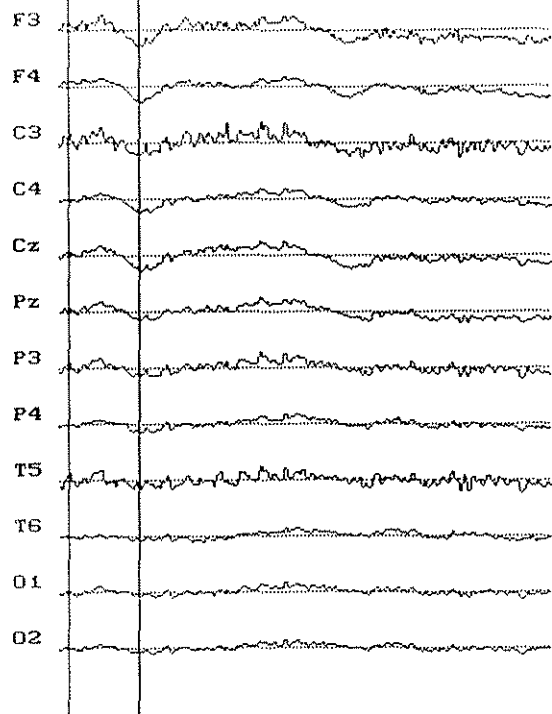
Bio-logic®

File:D:306220

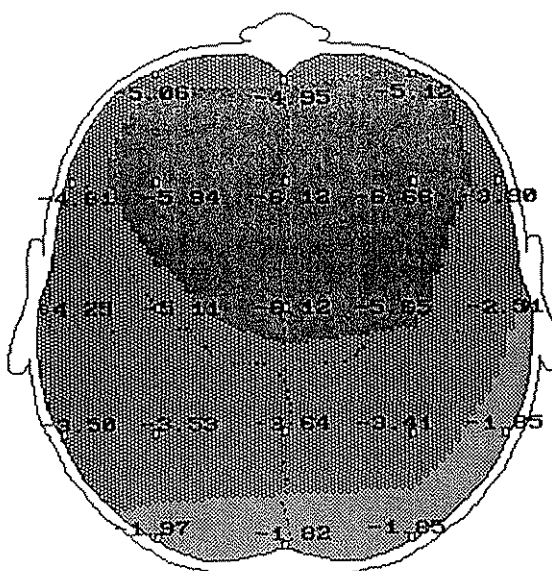
Ctl.: 23

View:Top

Rec.:2



AEP P300 RH ALERT CT CORR



Data:EP

Bank: 1
Time: 74.00

Scale: 1
Epoch: 512

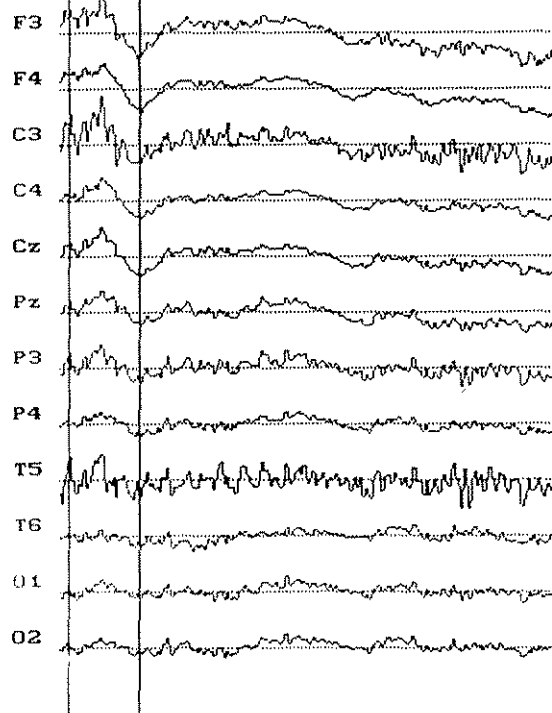
Bio-logic®

File:D:306220

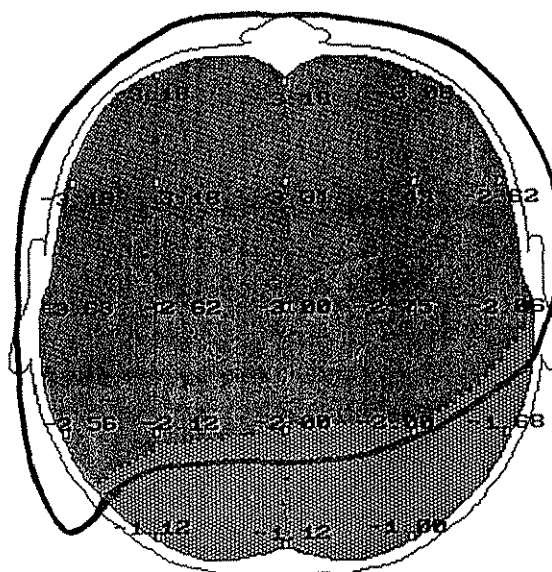
Ctl.:321AAA

View:Top

Rec.:2



AEP P300 RH ALERT CT CORR



Data:EP

1049

Bank: 1
Time: 74.00

Scale: 8
Epoch: 512

Bio-logic®

File:D:PF3140M

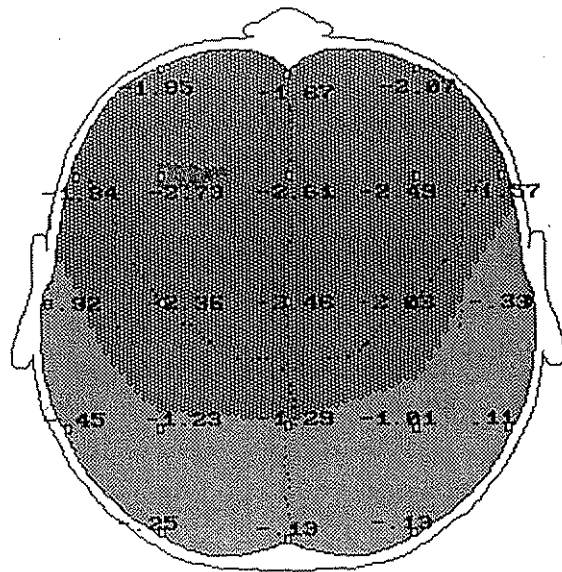
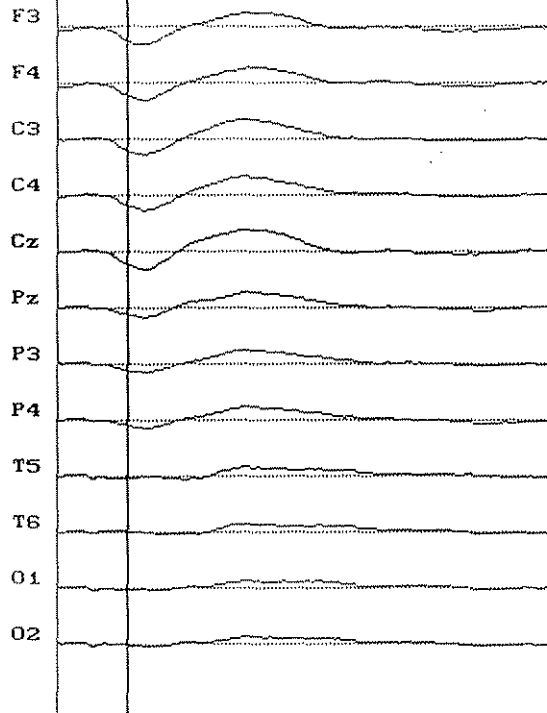
24

Ctl.:

View:Top

Rec.:1

10.6
uV



Normal N100 Control.

P300, BANK 1; 31-40 YRS.; MEAN

Data:EP

105

Bank: 1
Time: 200.00

Scale: 4
Epoch: 512

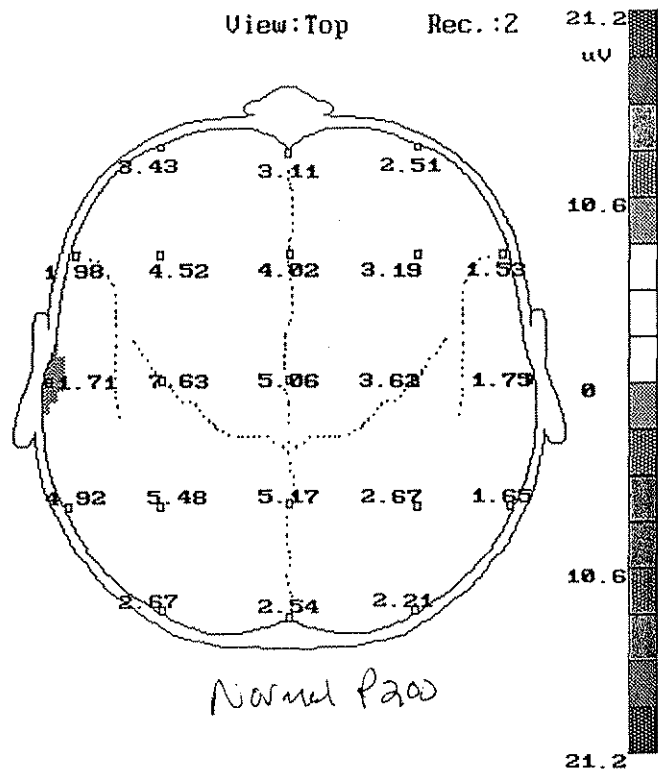
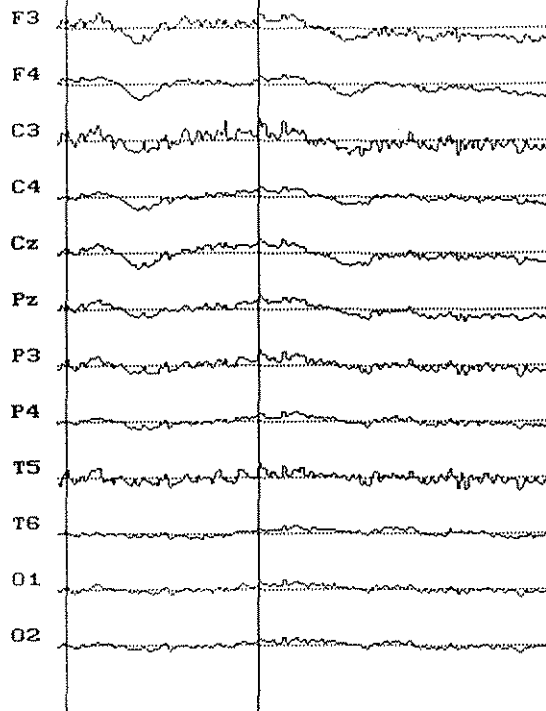
Bio-logic®

File:D:386220
Ctl.: +

25

View:Top

Rec.:2



AEP P300 RH ALERT CT CORR

Data:EP

Bank: 1
Time: 200.00

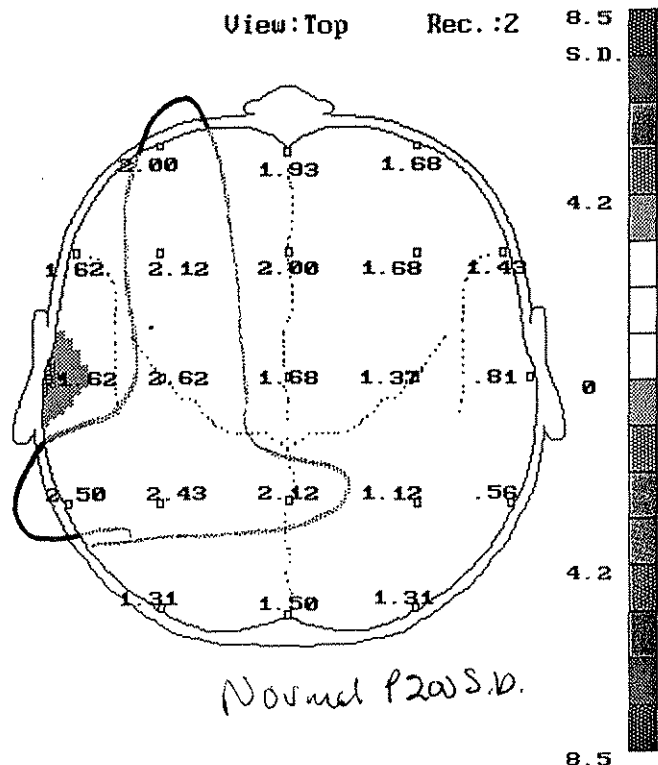
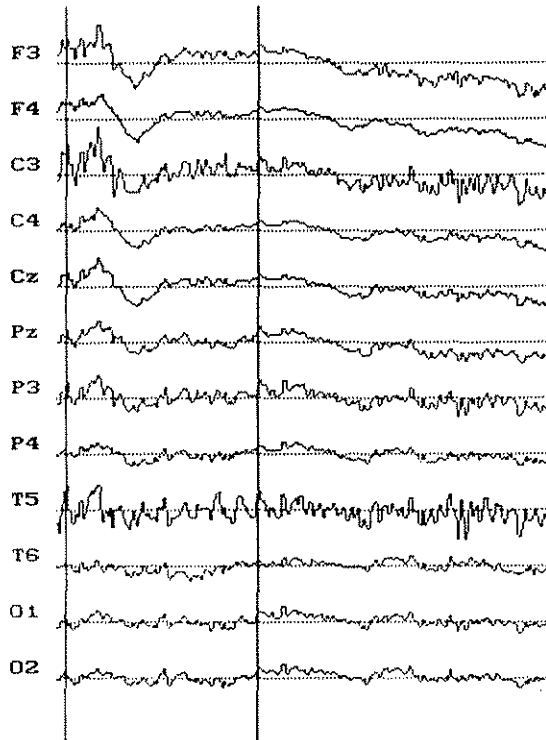
Scale: 1
Epoch: 512

Bio-logic®

File:D:386220
Ctl.:321AAA +

View:Top

Rec.:2



AEP P300 RH ALERT CT CORR

Data:EP

105

Bank: 1
Time: 200.00

Scale: 8
Epoch: 512

Bio-logic®

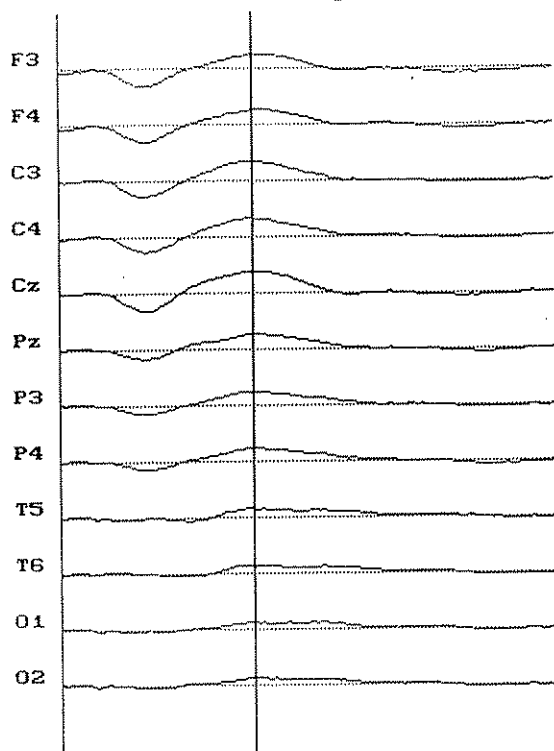
File: D:PF3140M

Ctl.:

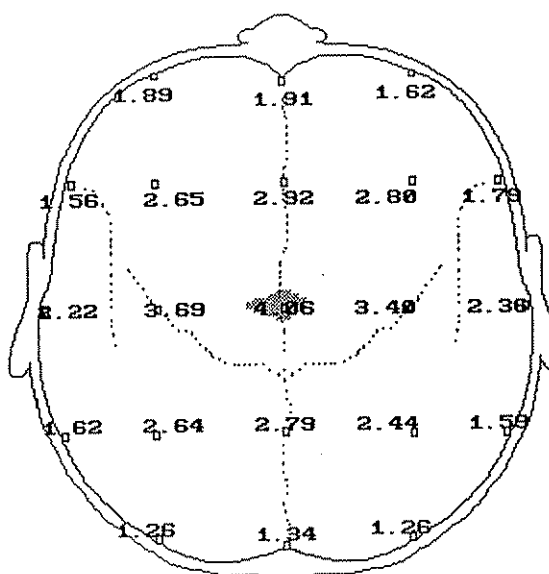
Rec.: 1

26

View: Top

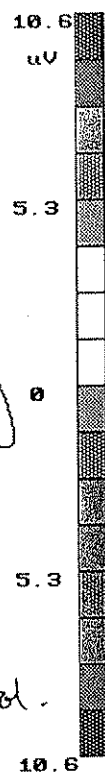


P300, BANK 1; 31-40 YRS.; MEAN



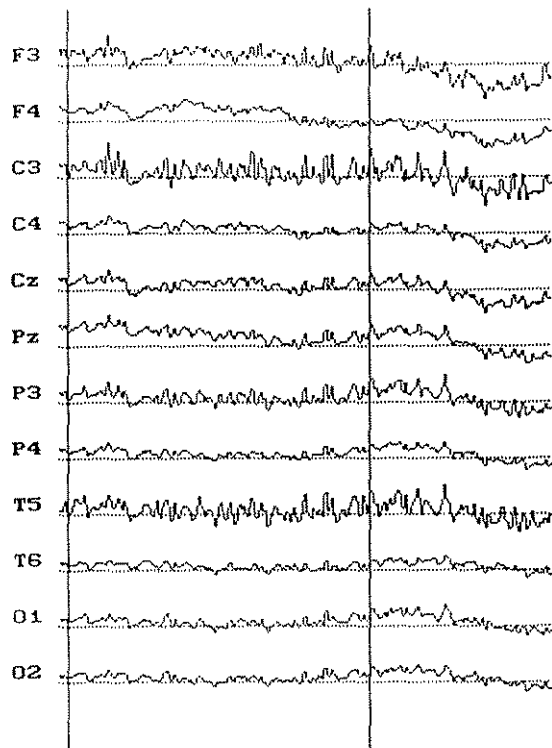
Normal P200 Control.

Data: EP



105

Bank: 2 Scale: 2
Time: 314.00 Epoch: 512



AEP P300 RH ALERT CT CORR

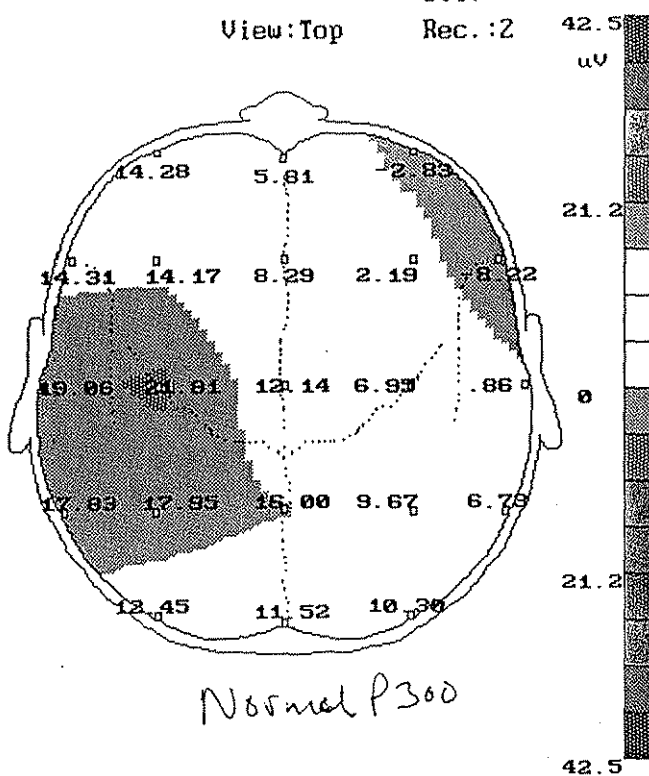
Bio-logic®

File:D:306220
Ctl.: +

27

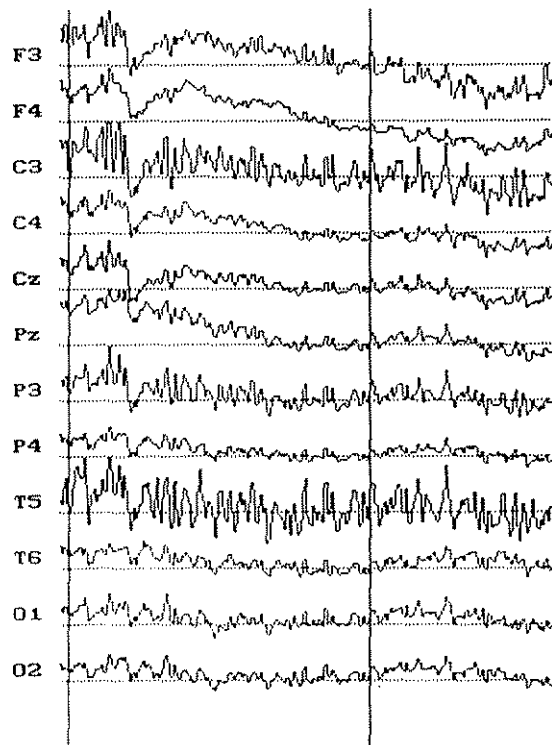
View:Top

Rec.:2



Data:EP

Bank: 2 Scale: 1
Time: 314.00 Epoch: 512



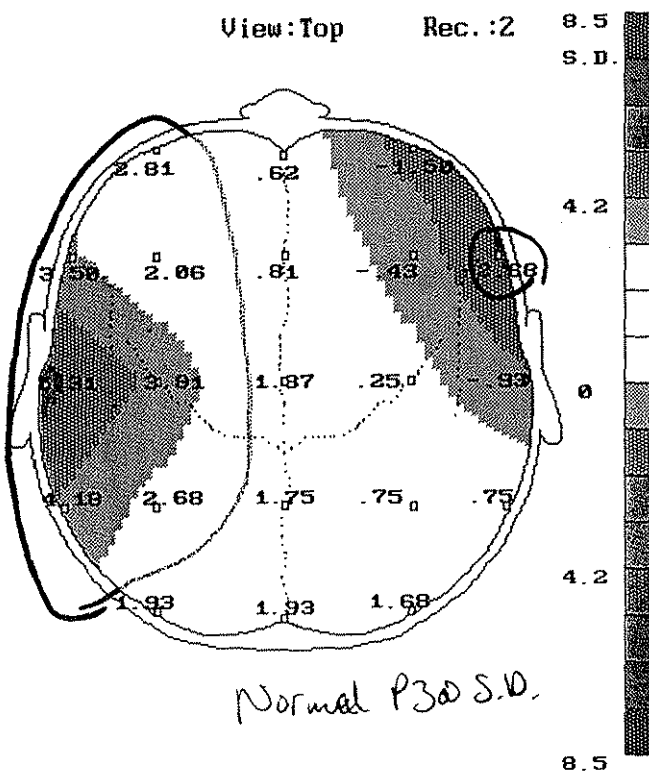
AEP P300 RH ALERT CT CORR

Bio-logic®

File:D:306220
Ctl.:322AAA +

View:Top

Rec.:2



Data:EP

105

Bank: 1
Time: 314.00

Scale: 4
Epoch: 512

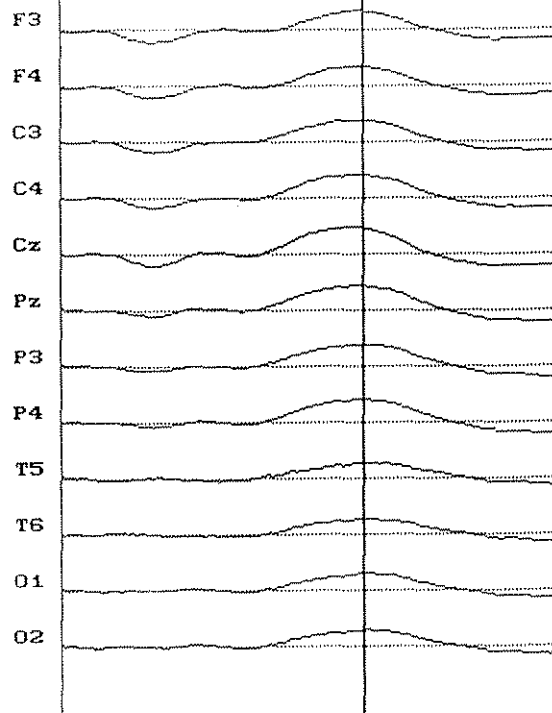
Bio-logic®

File:D:P33140M

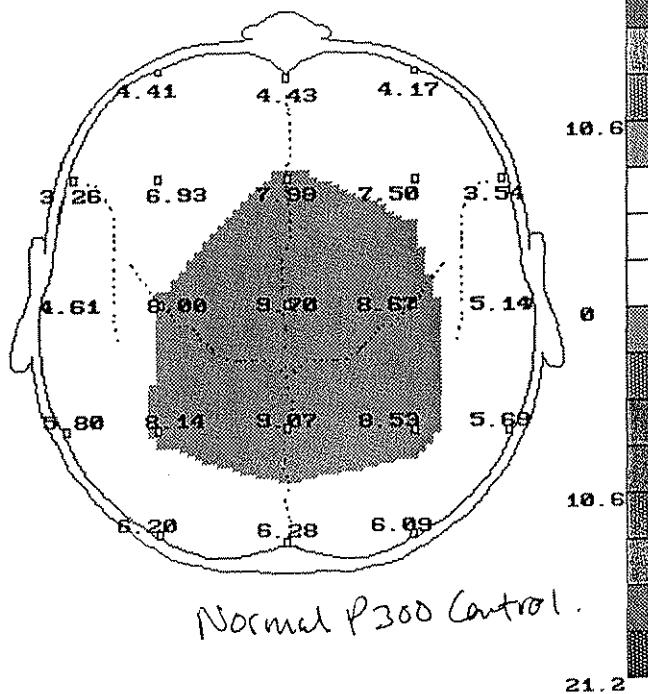
Ctl.: +

View:Top

Rec.:1



P300, BANK 2; 31-40 YRS.; MEAN



Normal P300 Control.

Data:EP

Bank: 1 Scale: 8
Time: 40 Epoch: 1024

Bio-logic®

File:D:306220

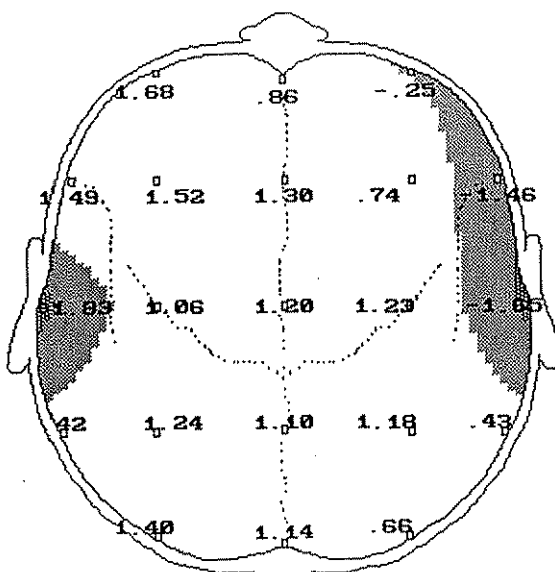
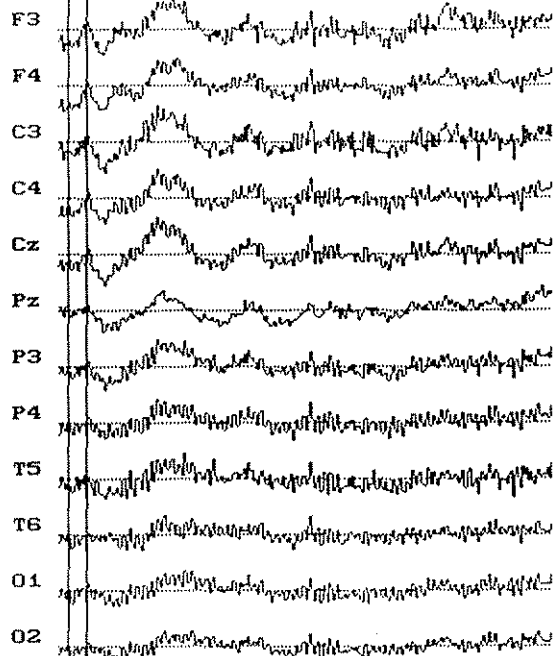
Ctl.: +

29

View:Top

Rec.:3

10.6



Slow PSD

AEP P300 RH ALERT CT CORR

Data:EP

Bank: 1 Scale: 1
Time: 40 Epoch: 1024

Bio-logic®

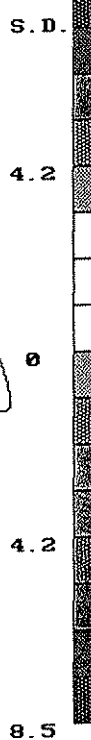
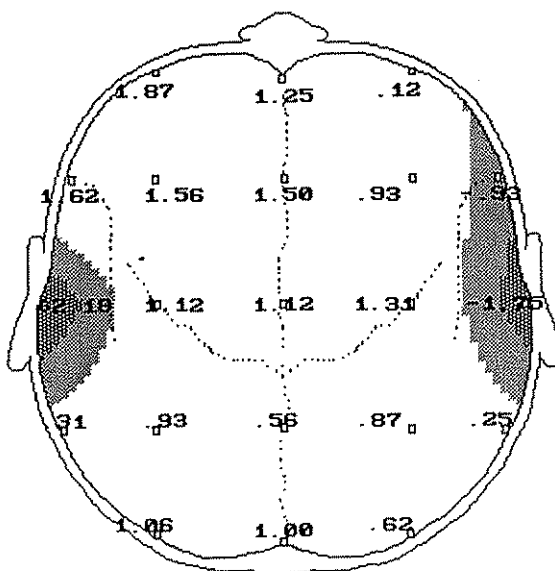
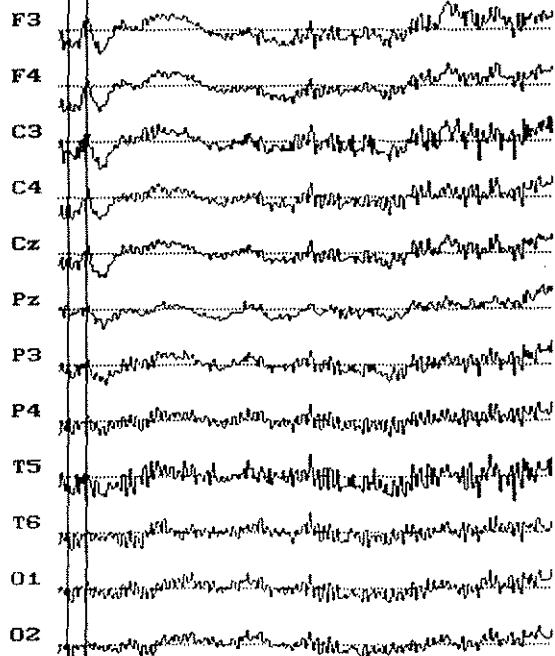
File:D:306220

Ctl.:331AAA +

View:Top

Rec.:3

8.5



Slow PSD S.D.

AEP P300 RH ALERT CT CORR

Data:EP

105

Bank: 1
Time: 40.00

Scale: 8
Epoch: 512

Bio-logic®

File:D:PF3140M

30

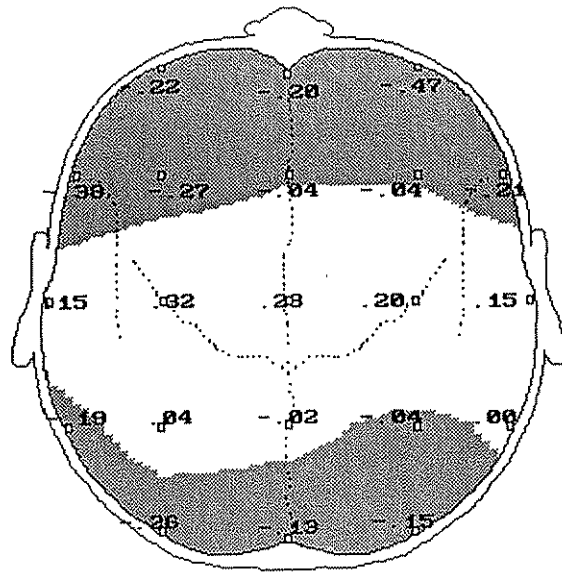
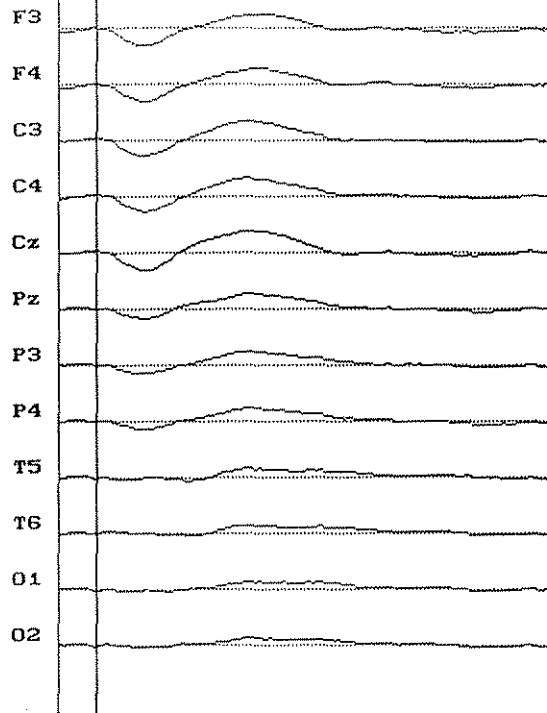
Ctl.:

View:Top

Rec.:1

10.6

uV



slow P50 Control.

P300, BANK 1; 31-40 YRS.; MEAN

Data:EP

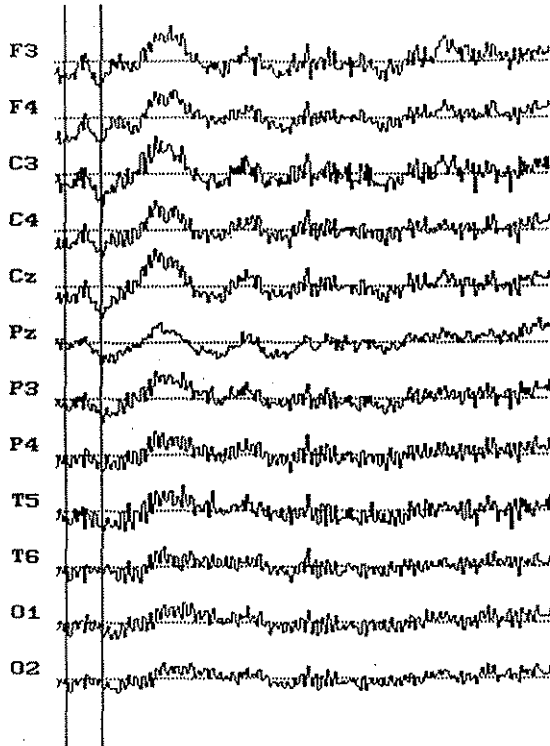
Bank: 1
Time: 76

Scale: 8
Epoch: 1024

Bio-logic®

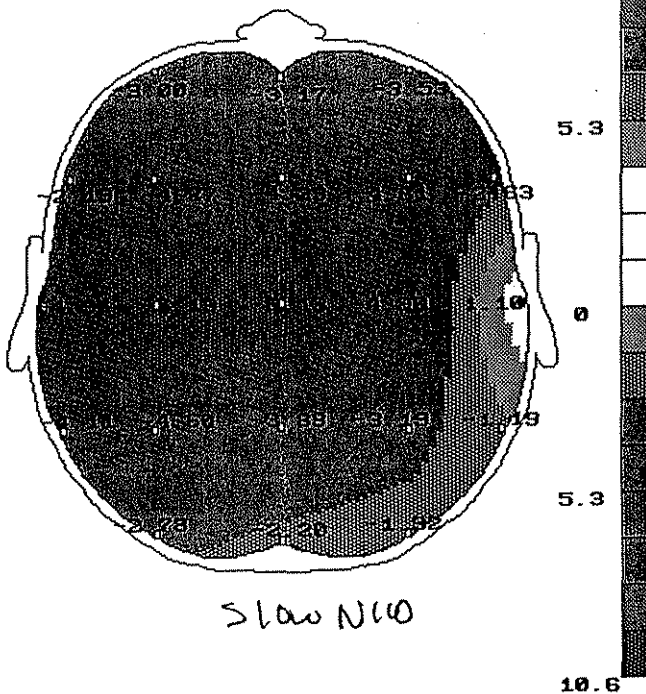
File:D:306220 31

Ctl.: +
Rec.: 3



AEP P300 RH ALERT CT CORR

View: Top



Data: EP

Bank: 1
Time: 76

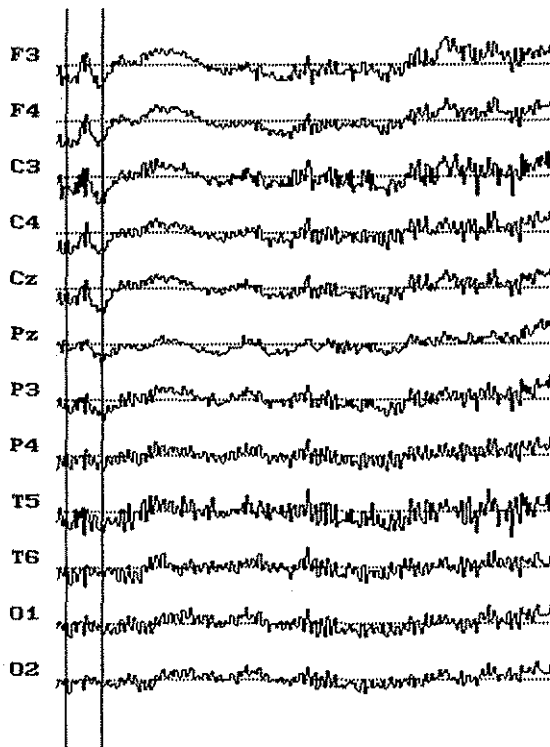
Scale: 1
Epoch: 1024

Bio-logic®

File:D:306220

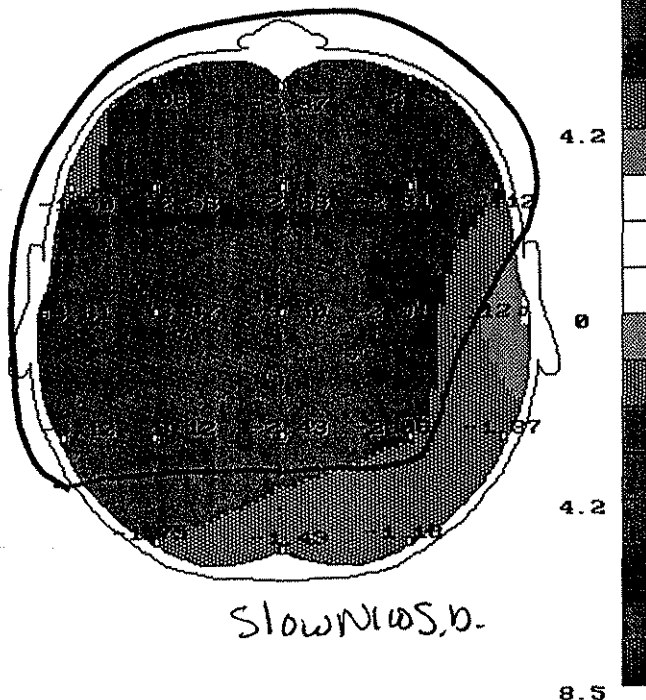
Ctl.: 331AAA +

Rec.: 3



AEP P300 RH ALERT CT CORR

View: Top



Data: EP

Bank: 1
Time: 76.00

Scale: 8
Epoch: 512

Bio-logic®

File:D:PF3140M

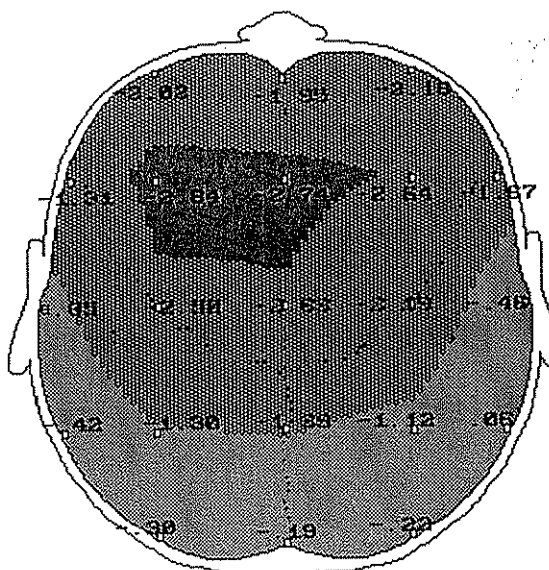
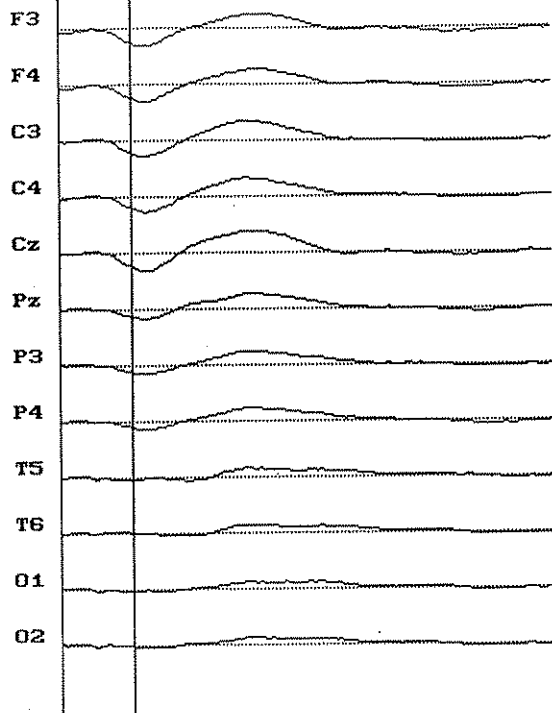
Ctl.:

Rec.:1

View:Top

10.6

uV



Slow N100 Control -

P300, BANK 1; 31-40 YRS.; MEAN

Data:EP

Bank: 1
Time: 184

Scale: 8
Epoch: 1024

Bio-logic®

File:D:306220
Ct1.: +

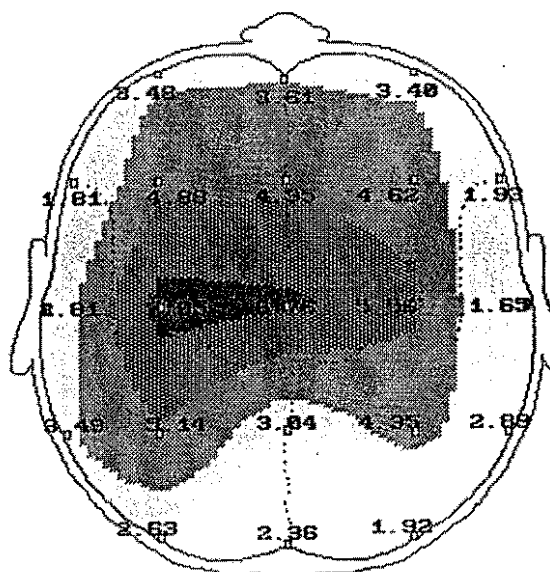
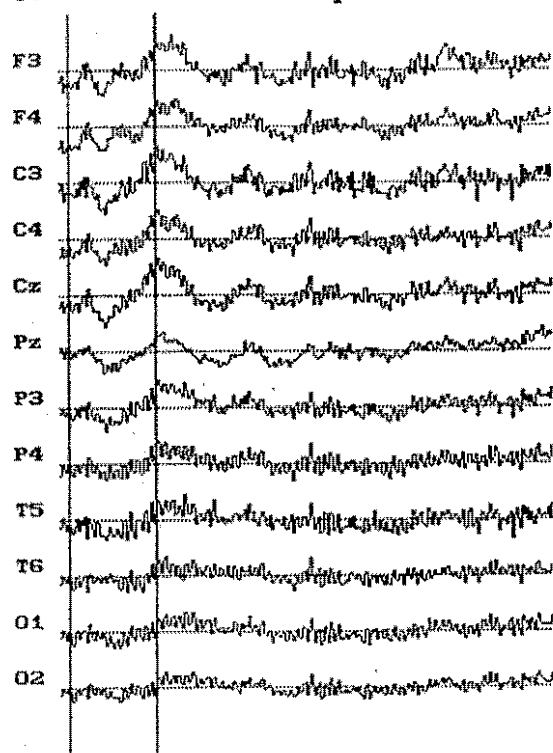
33

View:Top

Rec.:3

10.6

uV



Slow P200

10.6

AEP P300 RH ALERT CT CORR

Data:EP

Bank: 1
Time: 184

Scale: 1
Epoch: 1024

Bio-logic®

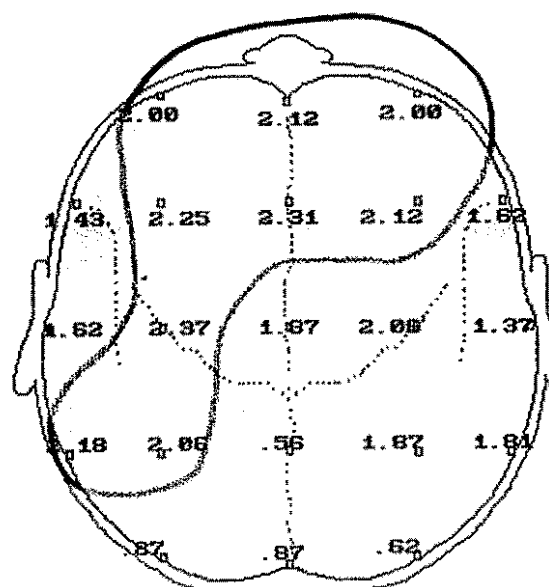
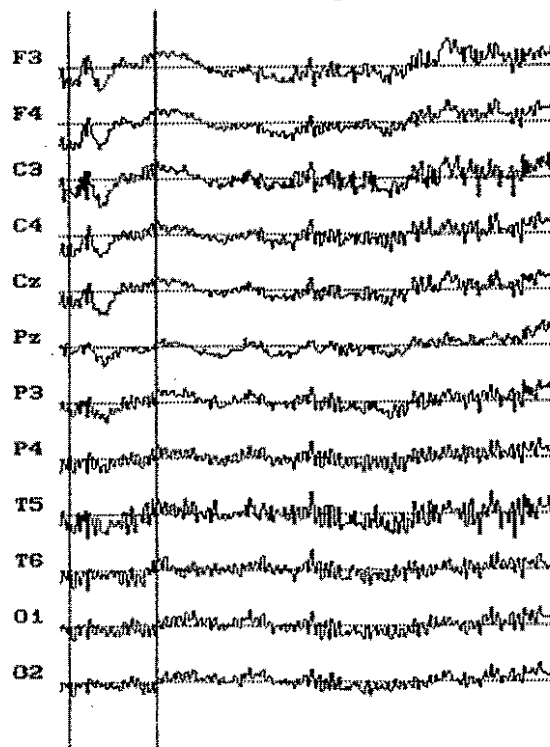
File:D:306220
Ct1.:331AAA +

View:Top

Rec.:3

8.5

S.D.



Slow P200 S.D.

8.5

AEP P300 RH ALERT CT CORR

Data:EP

105

Bank: 1
Time: 184.00

Scale: 8
Epoch: 512

Bio-logic®

File: D:PF3140M

34

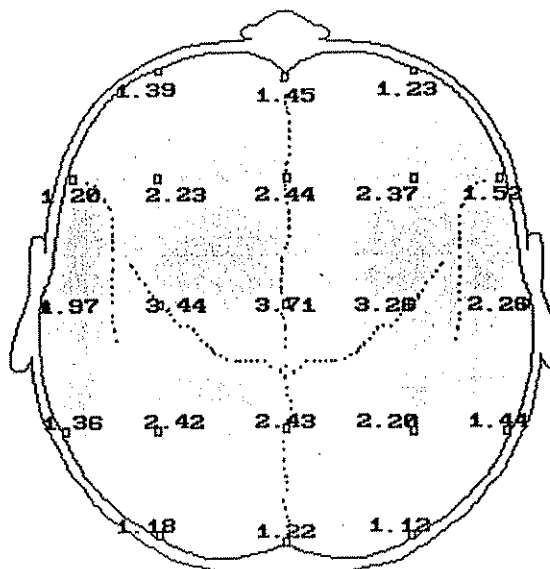
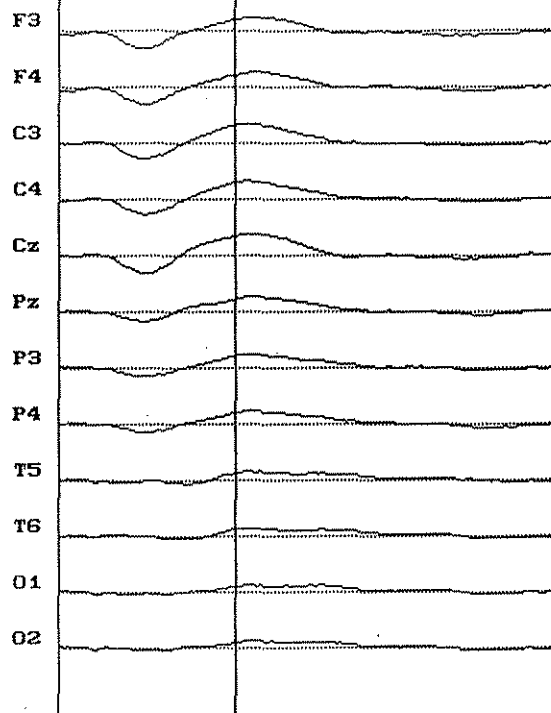
Ctl.:

View: Top

Rec.: 1

10.6

uV



Slow P200 Control.

P300, BANK 1; 31-40 YRS.; MEAN

Data: EP

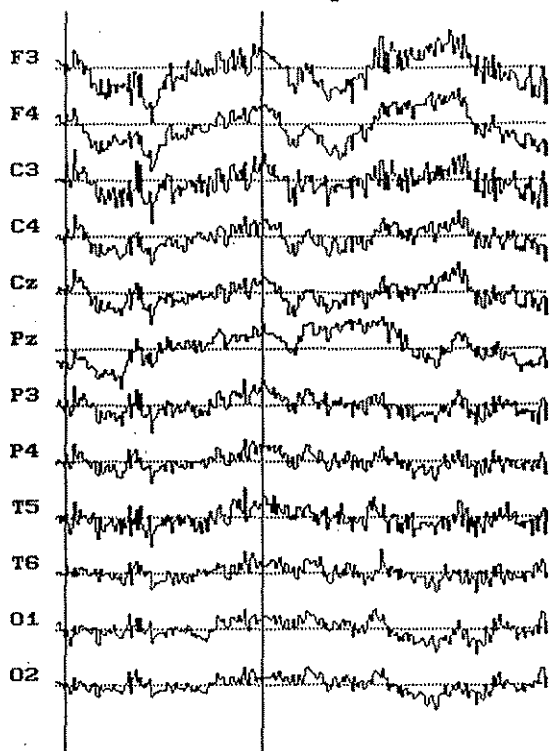
1060

Bank: 2
Time: 412
Scale: 4
Epoch: 1024

Bio-logic®

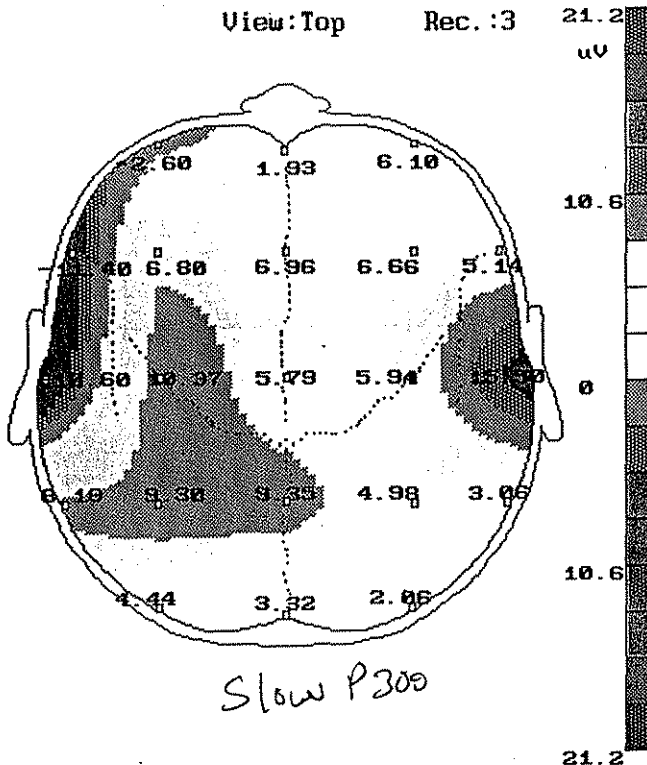
File: D:306220
Ctl.: +

35



View: Top

Rec.: 3



Slow P300

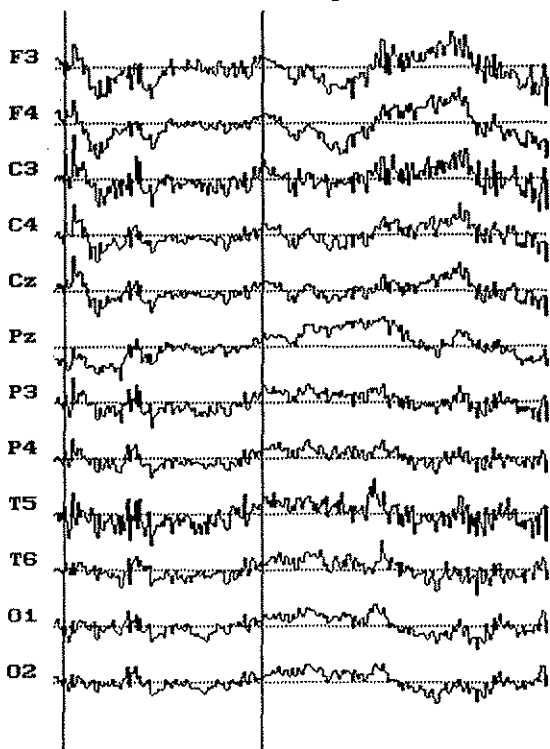
AEP P300 RH ALERT CT CORR

Data: EP

Bank: 2
Time: 412
Scale: 1
Epoch: 1024

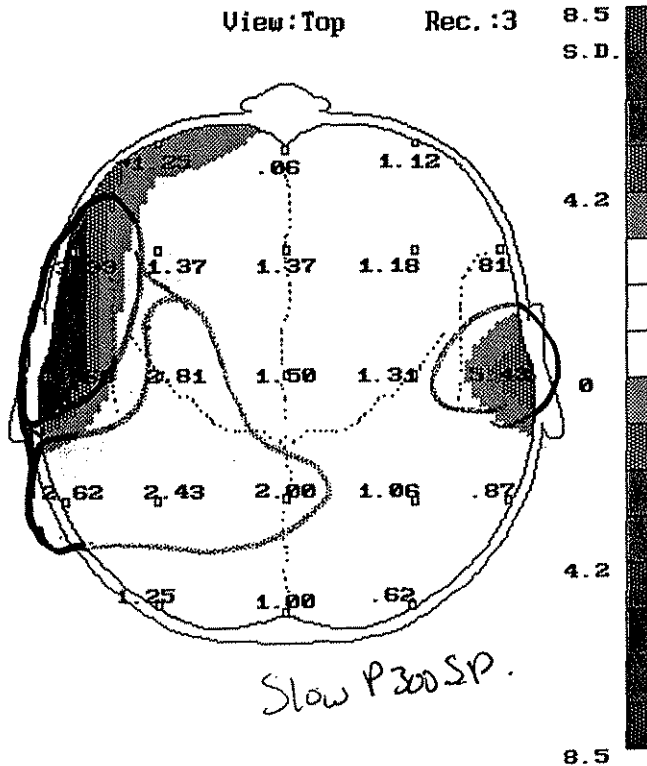
Bio-logic®

File: D:306220
Ctl.: 332AAA +



View: Top

Rec.: 3



Slow P300 SP.

AEP P300 RH ALERT CT CORR

Data: EP

106,

Bank: 1
Time: 412.00

Scale: 8
Epoch: 512

Bio-logic®

File:D:P33140M

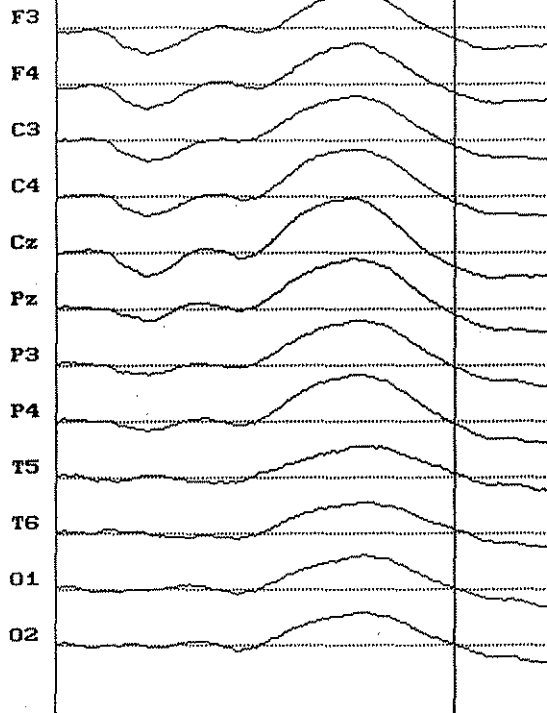
Ctl.:

View:Top

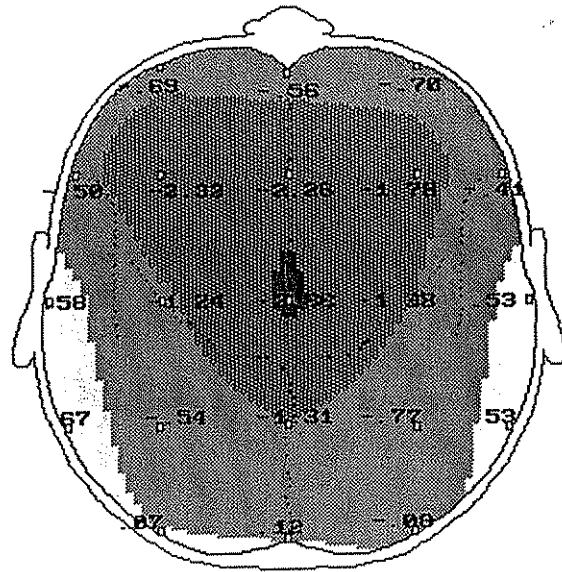
Rec.:1

10.6

uV



P300, BANK 2; 31-40 YRS.; MEAN



Slow P300 Control.

Data:EP

Bank: 1	Scale: 64				
Sites	Delta	Theta	Alpha	Beta	Total
Fp1	125.9	15.3	14.2	11.0	168
Fpz	115.6	13.8	13.3	10.1	155
Fp2	128.6	16.7	16.9	12.1	177
F7	139.3	13.5	12.3	9.8	177
F3	116.8	19.1	19.0	13.2	170
Fz	112.6	17.6	18.7	12.1	163
F4	113.7	18.1	20.1	12.9	167
F8	151.4	17.6	15.7	12.9	201
T3	45.0	7.6	9.0	14.1	78
C3	55.1	12.1	15.8	13.3	98
Cz	53.0	14.3	20.7	15.1	106
C4	49.3	11.5	16.1	16.0	95
T4	35.5	8.7	10.2	20.7	82
T5	34.9	6.7	18.8	15.9	78
P3	42.4	9.3	34.0	16.2	104
Pz	63.3	11.2	42.7	16.3	136
P4	32.5	7.0	33.3	18.7	93
T6	26.7	4.6	20.9	15.0	69
O1	33.3	6.9	50.8	17.3	110
Oz	32.5	5.9	47.8	13.9	102
O2	32.5	5.7	46.6	12.6	99

FFT ENC POST HV RH ALERT

Bio-logic®

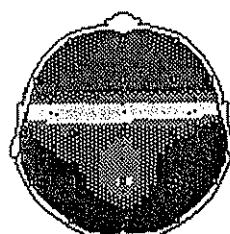
File:D:206220 37

Ctl.:

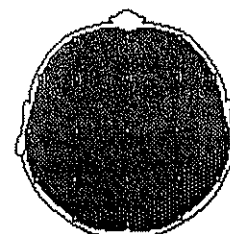
View:Top

Rec.:1

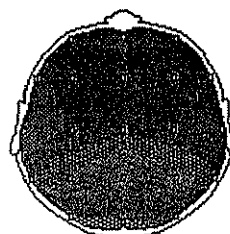
125
uV²



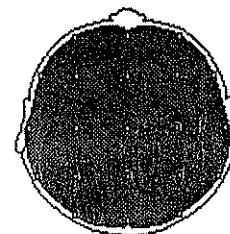
0.0-3.5



4.0-7.5



8.0-12.0



12.5-24.0

Absolute Power

Data:FFT Total: 0.0-24.0 Hz

Bank: 1	Scale: 16				
Sites	Delta	Theta	Alpha	Beta	
Fp1	74.8	9.1	8.5	6.5	
Fpz	74.7	8.9	8.6	6.5	
Fp2	72.7	9.4	9.5	6.8	
F7	78.7	7.6	7.0	5.6	
F3	68.6	11.2	11.2	7.7	
Fz	69.1	10.8	11.5	7.4	
F4	68.0	10.8	12.0	7.7	
F8	75.2	8.7	7.8	6.4	
T3	57.8	9.8	11.6	18.1	
C3	55.9	12.3	16.1	13.5	
Cz	50.2	13.5	19.6	14.3	
C4	51.8	12.1	16.9	16.8	
T4	43.5	10.7	12.5	25.3	
T5	44.6	8.6	24.1	20.3	
P3	40.7	8.9	32.6	15.6	
Pz	46.6	8.2	31.4	12.0	
P4	34.9	7.5	35.7	20.1	
T6	38.6	6.7	30.3	21.8	
O1	30.2	6.2	46.0	15.7	
Oz	31.9	5.8	46.9	13.7	
O2	32.7	5.7	47.0	12.7	

FFT ENC POST HV RH ALERT

Bio-logic®

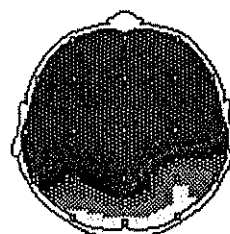
File:D:206220

Ctl.:

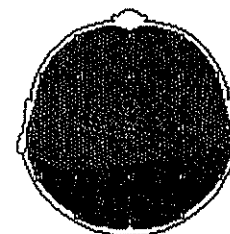
View:Top

Rec.:1

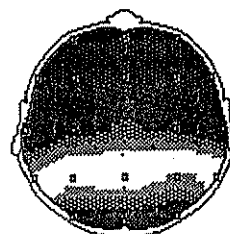
50.0
%Pwr



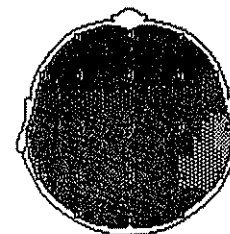
0.0-3.5



4.0-7.5



8.0-12.0



12.5-24.0

Relative Power

Data:FFT Total: 0.0-24.0 Hz

106-

Bank: 1 Scale: 64

Sites	Delta	Theta	Alpha	Beta	Total
Fp1	37.1	15.9	5.7	6.2	67
Fpz	29.7	13.3	4.8	6.3	55
Fp2	46.5	16.8	5.8	9.1	79
F7	45.4	16.2	6.7	6.6	77
F3	36.9	17.6	6.1	7.8	69
Fz	34.9	16.3	5.6	7.1	65
F4	39.7	17.1	6.1	8.5	73
F8	63.9	19.3	5.4	11.1	102
T3	28.4	7.2	3.7	6.9	48
C3	31.8	14.5	6.3	7.2	61
Cz	34.8	17.2	7.8	10.4	72
C4	28.8	12.5	7.8	11.2	61
T4	28.5	6.4	4.7	16.8	55
T5	18.1	5.8	3.5	8.6	37
P3	31.6	18.6	5.5	9.8	58
Pz	34.9	18.6	5.8	8.8	61
P4	15.8	5.8	3.6	8.8	34
T6	16.5	4.5	4.2	9.2	36
O1	21.2	8.4	5.8	11.3	47
Oz	28.2	8.2	4.7	9.5	44
O2	28.2	8.5	4.9	8.7	44

FFT END RH ALERT

Bio-logic®

File:D:286228

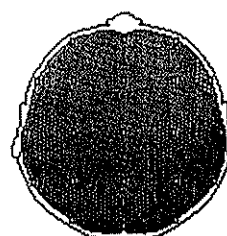
Ctl.:

View:Top

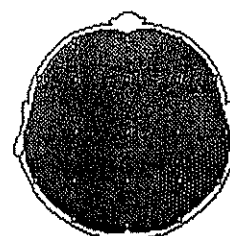
Rec.:2

125

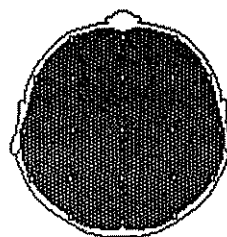
μV^2



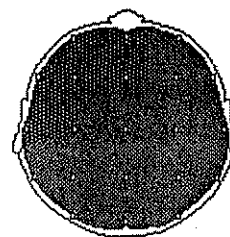
0.0-3.5



4.0-7.5



8.0-12.0



12.5-24.0

Absolute Power

Data:FFT Total: 0.0-24.0 Hz

Bank: 1 Scale: 16

Sites	Delta	Theta	Alpha	Beta
Fp1	55.8	23.9	8.5	9.4
Fpz	54.5	24.4	7.3	11.5
Fp2	58.7	21.3	6.3	11.5
F7	59.8	21.1	8.7	8.5
F3	53.3	25.5	8.8	18.1
Fz	53.5	24.9	8.6	18.8
F4	54.4	23.4	8.3	11.6
F8	62.6	18.9	5.3	18.9
T3	58.9	17.8	9.2	17.1
C3	51.8	23.9	18.4	11.9
Cz	48.2	23.7	18.8	14.3
C4	45.9	28.5	11.6	18.5
T4	37.2	11.6	8.6	38.4
T5	48.9	15.5	9.3	23.2
P3	54.1	18.1	9.4	15.5
Pz	57.2	17.4	9.5	13.2
P4	46.1	14.5	18.4	25.9
T6	46.1	12.7	11.7	25.6
O1	44.8	17.7	18.6	23.9
Oz	46.8	18.6	18.6	21.7
O2	46.2	19.3	11.2	19.8

FFT END RH ALERT

Bio-logic®

File:D:286228

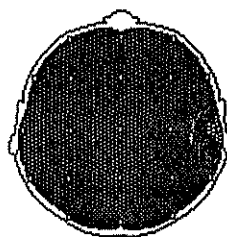
Ctl.:

View:Top

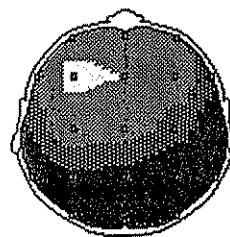
Rec.:2

50.0

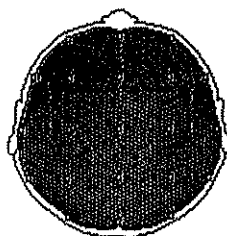
%Pwr



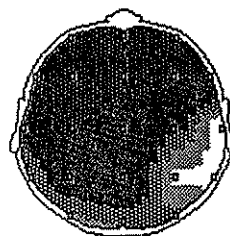
0.0-3.5



4.0-7.5



8.0-12.0



12.5-24.0

Relative Power

Data:FFT Total: 0.0-24.0 Hz

1060

Bank: 1 Scale: 64

Sites	Delta	Theta	Alpha	Beta	Total
Fp1	37.1	15.9	5.7	6.2	67
Fpz	29.7	13.3	4.8	6.3	55
Fp2	46.5	16.8	5.8	9.1	79
F7	45.4	16.2	6.7	6.6	77
F3	36.9	17.6	6.1	7.8	69
Fz	34.9	16.3	5.6	7.1	65
F4	39.7	17.1	6.1	8.5	73
F8	63.9	19.3	5.4	11.1	102
T3	20.4	7.2	3.7	6.9	40
C3	31.8	14.5	6.3	7.2	61
Cz	34.8	17.2	7.8	10.4	72
C4	28.8	12.5	7.8	11.2	61
T4	20.5	6.4	4.7	16.8	55
T5	18.1	5.8	3.5	8.6	37
P3	31.6	10.6	5.5	9.8	58
Pz	34.9	10.6	5.8	8.8	61
P4	15.8	5.8	3.6	8.8	34
T6	16.5	4.5	4.2	9.2	36
O1	21.2	8.4	5.8	11.3	47
Oz	20.2	8.2	4.7	9.5	44
O2	20.2	8.5	4.9	8.7	44

FFT EMO RH ALERT

Bio-logic®

File:D:206220

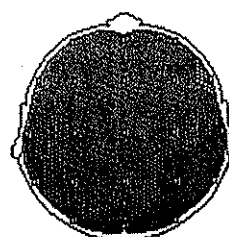
Ctl.:

View:Top

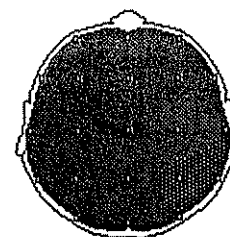
Rec.:2

125

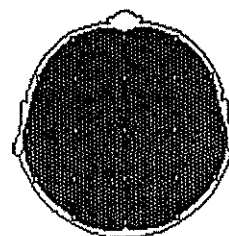
uV²



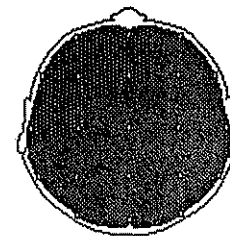
0.0-3.5



4.0-7.5



8.0-12.0



12.5-24.0

Absolute Power

Data:FFT Total: 0.0-24.0 Hz

Bank: 1 Scale: 16

Sites	Delta	Theta	Alpha	Beta
Fp1	55.8	23.9	8.5	9.4
Fpz	54.5	24.4	7.3	11.5
Fp2	58.7	21.3	6.3	11.5
F7	59.8	21.1	8.7	8.5
F3	53.3	25.5	8.8	10.1
Fz	53.5	24.9	8.6	10.8
F4	54.4	23.4	8.3	11.6
F8	62.6	18.9	5.3	10.9
T3	50.9	17.8	9.2	17.1
C3	51.8	23.9	10.4	11.9
Cz	48.2	23.7	10.8	14.3
C4	45.9	20.5	11.6	18.5
T4	37.2	11.6	8.6	30.4
T5	48.9	15.5	9.3	23.2
P3	54.1	18.1	9.4	15.5
Pz	57.2	17.4	9.5	13.2
P4	46.1	14.5	10.4	25.9
T6	46.1	12.7	11.7	25.6
O1	44.8	17.7	10.6	23.9
Oz	46.8	18.6	10.6	21.7
O2	46.2	19.3	11.2	19.8

FFT EMO RH ALERT

Bio-logic®

File:D:206220

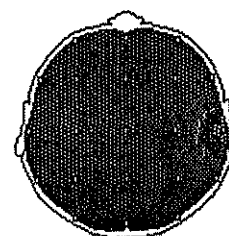
Ctl.:

View:Top

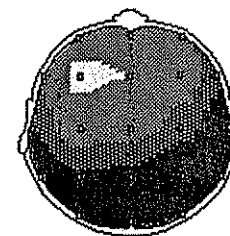
Rec.:2

50.0

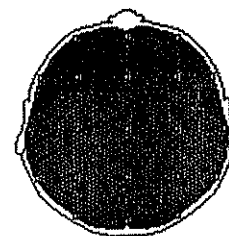
%Pwr



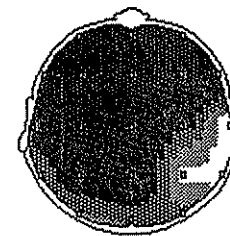
0.0-3.5



4.0-7.5



8.0-12.0



12.5-24.0

Relative Power

Data:FFT Total: 0.0-24.0 Hz

106

Bank: 1	Scale: 64				
Sites	Delta	Theta	Alpha	Beta	Total
Fp1	110.8	11.6	8.4	8.3	141
Fpz	133.8	10.8	7.9	8.3	162
Fp2	199.1	13.6	9.3	11.0	235
F7	127.0	11.2	6.6	7.6	154
F3	101.4	13.9	11.1	9.6	138
Fz	119.8	13.3	10.9	9.5	155
F4	150.5	14.5	11.6	11.0	189
F8	263.4	14.5	8.5	12.4	302
T3	35.2	6.2	5.3	8.3	56
C3	51.0	12.6	11.4	10.9	88
Cz	51.2	14.8	14.7	14.7	98
C4	54.8	11.2	11.7	16.1	96
T4	35.3	7.0	5.4	14.1	64
T5	20.9	6.8	8.1	10.9	48
P3	32.8	12.8	16.3	13.8	78
Pz	34.1	12.0	18.0	11.9	78
P4	16.6	5.4	11.7	12.3	47
T6	10.6	4.8	12.2	14.1	51
O1	16.4	8.3	18.1	14.3	59
Oz	15.7	7.5	18.0	12.1	55
O2	15.7	7.2	19.3	11.5	56

FFT ENC RESTING RH ALERT

Bio-logic®

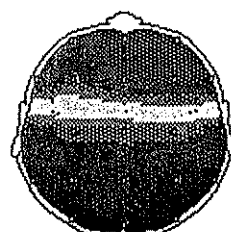
File:D:206220

Ctl.:

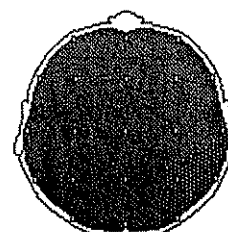
View:Top

Rec.:3

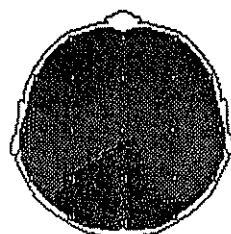
125
uV²



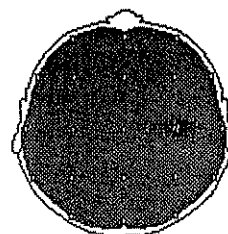
0.0-3.5



4.0-7.5



8.0-12.0



12.5-24.0

Absolute Power

Data:FFT Total: 0.0-24.0 Hz

Bank: 1	Scale: 16			
Sites	Delta	Theta	Alpha	Beta
Fp1	78.8	8.3	6.0	5.9
Fpz	82.5	6.6	4.9	5.1
Fp2	84.7	5.8	3.9	4.7
F7	82.4	7.2	4.3	4.9
F3	73.7	10.1	8.1	7.0
Fz	77.3	8.6	7.0	6.1
F4	79.4	7.6	6.1	5.8
F8	87.4	4.8	2.8	4.1
T3	62.6	11.0	9.5	14.8
C3	58.2	14.4	13.0	12.4
Cz	52.3	15.1	15.0	15.1
C4	56.9	11.7	12.1	16.7
T4	54.8	10.8	8.4	21.8
T5	43.5	14.2	17.0	22.7
P3	42.2	16.4	20.9	17.8
Pz	43.7	15.4	23.0	15.2
P4	35.2	11.3	24.8	25.9
T6	36.1	9.3	23.7	27.5
O1	27.9	14.1	30.8	24.3
Oz	28.6	13.6	32.8	22.1
O2	28.4	12.9	34.8	20.7

FFT ENC RESTING RH ALERT

Bio-logic®

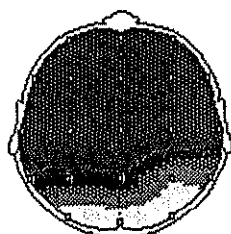
File:D:206220

Ctl.:

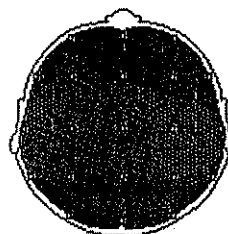
View:Top

Rec.:3

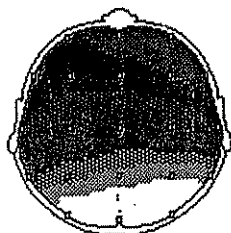
50.0
%Pwr



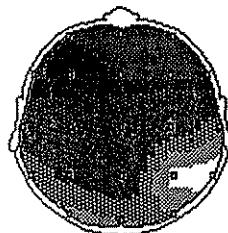
0.0-3.5



4.0-7.5



8.0-12.0



12.5-24.0

Relative Power

Data:FFT Total: 0.0-24.0 Hz

106

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON,

Claimant,

v.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 01-015332

**ANOTHER ORDER ON
CLAIMANT'S ATTENDANCE
AT SECOND EVALUATION**

FILED

MAY 12 2005

INDUSTRIAL COMMISSION

On May 11, 2005, the Defendants filed a Motion to Compel Attendance at Medical Evaluation. The Referee having reviewed the file herein and being fully advised in the premises,

HEREBY ORDERS that Defendants' motion is GRANTED. Claimant will attend and cooperate with the examination by Dr. Wilson as scheduled.

IT IS SO ORDERED.

DATED this 10th day of May, 2005.

INDUSTRIAL COMMISSION

ATTEST:

Dena K. Burke
Assistant Commission Secretary

Douglas A. Donohue
Douglas A. Donohue, Referee



**ANOTHER ORDER ON CLAIMANT'S
ATTENDANCE AT SECOND EVALUATION - 1**

1067

CERTIFICATE OF SERVICE

I hereby certify that on 12th day of May, 2005, a true and correct copy of the foregoing **ANOTHER ORDER ON CLAIMANT'S ATTENDANCE AT SECOND EVALUATION** was ***Sent by Facsimile Machine Process ONLY*** upon each of the following:

Vernon K. Smith Fax #: 345-1129
1900 West Main Street
Boise, ID 83702

Jon M. Bauman Fax #: 384-5844
P.O. Box 1539
Boise, ID 83701

db

Dena K. Burke

**ANOTHER ORDER ON CLAIMANT'S
ATTENDANCE AT SECOND EVALUATION - 2**

1068

- FAX -

Ryan P. Armbruster
 Jon M. Bauman
 ELAM & BURKE, P.A.
 251 East Front Street, Suite 300
 P.O. Box 1539
 Boise, Idaho 83701-1539
 Telephone: (208) 343-5454
 Facsimile: (208) 384-5844
 Armbruster - ISB #1878
 Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF
 THE STATE OF IDAHO

INDUSTRIAL COMMISSION

MAY 13 2005

FILED

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	REQUEST FOR TELEPHONE
	)	CONFERENCE
ADA COUNTY SHERIFF'S OFFICE,)	
)	
Employer,)	
)	
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

Defendants, by and through the law firm of Elam & Burke, P.A., their attorneys of record herein, hereby request a telephone conference be scheduled regarding this matter for May 13 or May 16, 2005. Pursuant to Rule 10, J.R.P., the parties' exhibits are due May 16, 2005. Before

REQUEST FOR TELEPHONE CONFERENCE - 1

G:\SHARED\0179\9303\PLEADINGS\request tele conf.1.wpd

1069

expending time and effort preparing the same, Defendants' counsel would like to discuss the pending motions, i.e., Defendants' Motion to Vacate Hearing and Claimant's Motion for Permission to Appeal, with the Referee.

Respectfully submitted this 13th day of May, 2005.

ELAM & BURKE, P.A.

By: 

Jon M. Bauman, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 13th day of May, 2005, I caused a true and correct copy of the above and foregoing instrument to be sent by the method indicated below to:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail (postage prepaid)
☐ Hand Delivery
☐ Federal Express
☒ Facsimile Transmission
Fax: 345-1129
Phone: 345-1125


Jon M. Bauman

05/12/2005 03:42 VERNON K. SMITH → 3342321

NO. 307

P02

FAX

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON

Claimant,

v.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

I.C. Case No. 01-015332

MOTION FOR PERMISSION
TO APPEAL FROM IDAHO
INDUSTRIAL COMMISSION'S
INTERLOCUTORY ORDERS
ENTERED MAY 10, 2005
AND MAY 12, 2005

2005 MAY 12 P 3:46
RECEIVED
INDUSTRIAL COMMISSION

COMES NOW The Claimant above-named, through counsel, Vernon K.

Smith, and pursuant to Rule 12, I.A.R., does elect to initiate a permissive appeal of certain interlocutory orders, and does request the Idaho Industrial Commission to enter an order granting Claimant the permission as allowed under Rule 12, I.A.R., to appeal the Industrial Commission's Interlocutory Orders entered May 10, 2005 and May 12, 2005, to the Idaho Supreme Court, based upon the record and facts of this case and case authorities as will be set forth and established in Claimant's Memorandum. In the Commission's May 10, 2005 order denying

1071

05/12/2005

03:42

VERNON R. SMITH → 3342321

NO. 307

003

Claimant's Motion for Reconsideration, the Referee did identify Claimant's reference to orders as being those interlocutory orders and apparently intended to state such orders are not appealable, as a matter of right under Rule 11, I.A.R., but such interlocutory orders of an agency are subject to the permissive appeal process established through the mechanism of a permissive appeal, pursuant to Rule 12, I.A.R.

This permissive appeal involves controlling questions of Idaho law to which there is substantial difference of opinion being advanced by the parties, and an immediate appeal may materially advance the orderly resolution of the following issues in this dispute:

1. Whether Claimant can be compelled by the Idaho Industrial Commission to participate in a third medical examination conducted by a paid advocate for the Defendants, without allowing Claimant the accommodating effects of being able to schedule her primary care psychiatrist and therapist to accompany her for that evaluation, as contemplated by § 72-433 (2), Idaho Code, due to the emotional and physical reactions from such confrontational proceedings, as demonstrated from the advocacy engaged by Dr. Cynthia Brownsmith.

2. Whether Claimant can be compelled by the Idaho Industrial Commission to participate in a third medical examination conducted by a paid advocate for Defendants, without allowing Claimant the required time to stabilize from earlier episodes of resulting injury from being compelled to participate in prior advocacy examination, resulting in need of immediate medical treatment and psychotherapy sessions with her psychiatrist, as it is essential to safeguard

1072

05/12/2005 03:42 VERNON K. SMITH → 3342321

NO. 307 004

the Claimant, and allow Claimant to become physically and mentally stabilized from the effects of the exhaustive re-evaluations and re-victimizations conducted by Defendants' medical advocate, Dr. Cynthia Brownsmith, which has directly caused Claimant to suffer severe re-victimization and psychological trauma as a result.

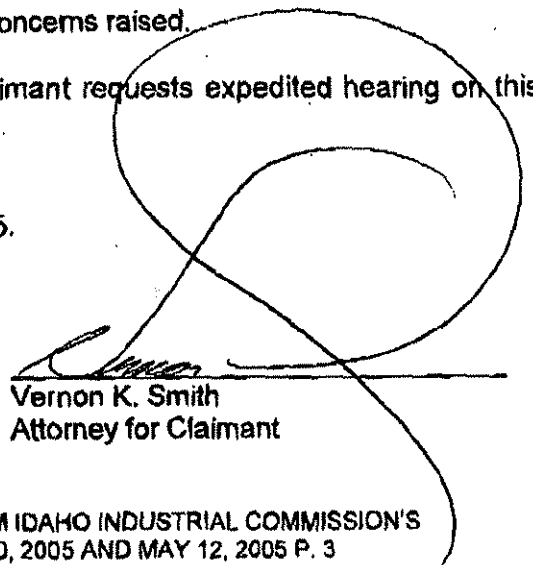
3. Whether Claimant, by participating in these evaluations ordered by the Industrial Commission, and contrary to the medical advice of her primary care psychiatrist, would be subject to the effects of § 72-435, Idaho Code, as Claimant would be knowingly participating in conduct that would be unreasonable injurious conduct, and will retard and imperil her medical recovery.

4. Whether Claimant should be allowed, in compliance with the medical advice of her primary care psychiatrist, to have her doctor continue efforts to stabilize Claimant's medical condition over such time as needed to stabilize Claimant before being again "ordered" by the Commission to attend any further evaluations by any further medical advocates of Defendants.

Claimant will submit her supporting memorandum within fourteen (14) days of the filing date of this Motion, as provided for by Rule 7 (b)(3) I.R.C.P., therein setting forth the requested relief for the concerns raised.

Pursuant to Rule 12, I.A.R., Claimant requests expedited hearing on this Motion.

Dated this 12th day of May 2005.



Vernon K. Smith
Attorney for Claimant

1072

05/12/2005

03:42

VERNON K. SMITH → 3342321

NO. 307

P05

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 12th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Mr. Jon Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701-1539

(☒) U.S. Mail
(☐) Fax
(☐) Hand Delivered


Vernon K. Smith

05/12/2005 22:38 VERNON K. SMITH → 3342321

NO. 309 P02

-FAX-

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON

Claimant,

v.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

STATE INSURANCE FUND,

Surety,
Defendants.

I.C. Case No. 01-015332

CLAIMANT'S RESPONSE TO
DEFENDANTS' MOTION TO
VACATE AND RESCHEDULE
HEARING

RECEIVED
INDUSTRIAL COMMISSION
2005 MAY 13 A 10:44

On May 12, 2005, Defendants submitted a Motion to Vacate and Reschedule the hearing previously scheduled in this matter to commence on May 26, 2005, and Claimant responds to Defendants' Motion as follows:

1. Contrary to the contents of Dr. Richard Wilson's Affidavit, attached to Defendants' Motion, Defendants' counsel previously stated on page 2 of Defendants' May 11, 2005 Motion to Compel Claimant's Attendance to a further medical evaluation that "Dr. Wilson is available to evaluate Claimant at a date and time to be determined but reasonably in advance of the May 26 hearing date". In

1075

05/12/2005

22:38

VERNON SMITH → 3342321

NO. 309 D03

their current Motion to vacate the scheduled hearing, they now state (page 2) "that Dr. Wilson is unavailable prior to the date of hearing in this matter". Furthermore (page 2), Defendants again erroneously inform the Industrial Commission the results of the EEG performed by Dr. Heyrend have not been produced. Claimant's counsel previously addressed this issue in the May 12, 2005 Response to Defendants' Motion to Compel, and again produced copies of the colored graphical representations and data from the EEG Dr. Heyrend conducted of Claimant on March 31, 2005. These were also produced in Claimant's Supplemental Response to Defendants' discovery response, sent to Defendants' counsel by First Class Mail on May 6, 2005.

2. Claimant does want to achieve the ends of justice in these compensation hearings, and therefore would cooperate with a request to vacate and reschedule the hearing in this matter, but is doing so only as long as the accommodating requirements and reasonableness of Idaho law are maintained in these future evaluation proceedings. An expedited basis for rescheduling the Industrial Commission hearing is not an option. Defendants must accommodate Claimant by allowing Dr. Heyrend to accompany Claimant to any more of these confrontational proceedings for an advocate evaluation, and not be contradictory to her doctor's advice and his patient and hospital schedule.

What is acceptable to Claimant and her primary care psychiatrist, is Claimant be provided sufficient time to fully stabilize under Dr. Heyrend's efforts to address these past tortuous endeavors, so Claimant can heal from the psychological trauma and physical effects caused by Claimant's re-victimizations

05/12/2005

22:38

VERNON K SMITH → 3342321

NO. 309

004

under past explorations by Dr. Cynthia Brownsmith. With time, Claimant's anxiety will be reduced, and structure a pathway for ongoing psychotherapy sessions to take effect; that additional time is required for Dr. Heyrend to be able to provide further medical attention to Claimant before she can sufficiently stabilize and be capable of being again confronted by further adversarial medical evaluations and examinations. Dr. Heyrend believes Claimant must be protected from this abusive self-serving conduct engaged in by Ada County, and further confrontational settings contradict his medical opinion and his advice to Claimant. He does not want her thrown into any further confrontations by advocates of Ada County and the State Insurance Fund who seek to explore within the depths of her trauma. Dr. Heyrend is of the medical opinion Claimant should not be subjected to any more of these intrusive and unwarranted examinations whatsoever, as the induced trauma is the obvious by-product. There is the potential risk of causing Claimant even further psychological trauma and strong potential of permanent psychological injury.

The first course of proceeding should be to provide any medical advocate the documents determined pertinent to the mental-physical injury, which specifically relates to the psychological workplace injury she suffered initially on July 20, 1999, and continuing thereafter. It now appears Defendants have carefully screened and "spoon-fed" what information Dr. Brownsmith was given, as her limited information and limited documentation was clearly revealed to Claimant's husband, John Gibson, during the April 14, 2005 videotaped session with the Gibsons and their discussions with Dr. Brownsmith. Her acknowledgement was revealed on the video. Claimant desires to have future evaluators provided a copy of the April 14,

05/12/2005

22:38

VERNON K. SMITH → 3342321

NO. 309


005

2005 videotape, along with documentation that will provide a complete and thorough factual analysis of the composite events that inflicted these injuries upon Claimant.

3. Claimant has now submitted her Motion for permissive appeal to the Commission, and will provide the supporting Memorandum on or before May 26, 2005. If that Motion is denied by the Commission, Claimant may choose to file a similar Motion to the Idaho Supreme Court, and seek permission to appeal the issues identified in the Motion. All of these processes take time, and Claimant would not commit to the scheduling of any hearing based upon any "expedited" process, but would commit she will attend adversarial evaluations based only upon the medical advice provided to her by Dr. Heyrend, who has an oath to uphold.

4. Claimant would have no objection to a status conference being scheduled in this matter.

Dated this 13th day of May 2005.


Vernon K. Smith
Attorney for Claimant

05/12/2005

22:38

VERNON K. SMITH → 3342321

NO. 309

D06

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 13th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho 83720-0041

()
(✓)
()

U.S. Mail
Fax
Hand Delivered

Jon M. Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701

()
(✓)
()

U.S. Mail
Fax
Hand Delivered


Vernon K. Smith

05/12/2005 22:42 VERNON K. SMITH → 3342321

NO. 311

D02

VERNON K. SMITH
 ATTORNEY AT LAW
 1900 West Main Street
 Boise, Idaho 83702
 Idaho State Bar No. 1365
 Telephone: (208) 345-1125
 Fax: (208) 345-1129

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON

Claimant,

v.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

STATE INSURANCE FUND,

Surety,
 Defendants.

I.C. Case No. 01-015332

**AVAILABILITY OF CLAIMANT'S
 COUNSEL FOR TELEPHONE
 CONFERENCE**

RECEIVED
 INDUSTRIAL COMMISSION
 2005 MAY 13 A 10:48

COMES NOW The Claimant above-named, through counsel, Vernon K. Smith, and in response to Defendants' May 13, 2005 Request for Telephone Conference, does respond and provide the currently available dates and times for his participation:

May 13, 2005	Unavailable
May 16, 2005	Available between 1:00 p.m. and 5:00 p.m.
May 18, 2005	Available between 1:00 p.m. and 5:00 p.m.
May 20, 2005	Available between 10:00 a.m. and 5:00 p.m.

05/12/2005

22:42

VERNON K. SMITH → 3342321

NO. 311

003

Dated this 13th day of May 2005.


Vernon K. Smith
Attorney for Claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 13th day of May 2005, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho 83720-0041

() U.S. Mail
(☒) Fax
() Hand Delivered

Jon M. Bauman
Elam & Burke
P.O. Box 1539
Boise, Idaho 83701

() U.S. Mail
(☒) Fax
() Hand Delivered


Vernon K. Smith

100

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STACY A. GIBSON,

Claimant,

v.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 01-015332 - 74

ORDER VACATING HEARING
AND NOTICE OF
TELEPHONE CONFERENCE

FILED

MAY 13 2005

INDUSTRIAL COMMISSION

The Referee having reviewed the file herein and being fully advised in the premises,
HEREBY ORDERS that the hearing set for May 26 and 27, 2005, in the above-entitled
matter is hereby VACATED.

FURTHER, NOTICE IS HEREBY GIVEN that, instead of the hearing in this matter,
a telephone conference will be held on MAY 26, 2005, AT 10:00 A.M. MOUNTAIN TIME.
The Referee will initiate the calls. All parties shall be prepared to discuss the status of this case.

DATED this 13th day of May, 2005.

INDUSTRIAL COMMISSION

ATTEST:

Rena K. Burke
Assistant Commission Secretary



Douglas A. Donohue, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2005, a true and correct copy of **ORDER VACATING HEARING AND NOTICE OF TELEPHONE CONFERENCE** was Sent by Facsimile Machine Process upon each of the following:

Vernon K. Smith Fax #: 345-1129
1900 West Main Street
Boise, ID 83702

Jon M. Bauman Fax #: 384-5844
P.O. Box 1539
Boise, ID 83701

db

Rena K. Burke

1087

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

2005 MAY 19 P 3:35
RECEIVED
INDUSTRIAL COMMISSION

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	OBJECTION TO CLAIMANT'S
	)	MOTION FOR PERMISSION TO
ADA COUNTY SHERIFF'S OFFICE,	)	APPEAL FROM IDAHO INDUSTRIAL
	)	COMMISSION'S INTERLOCUTORY
Employer,	)	ORDERS ENTERED MAY 10, 2005
	)	AND MAY 12, 2005, AND MOTION
and	)	FOR EXPEDITED BRIEFING
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

Defendants in the above-noted matter, by and through the law firm of Elam & Burke, P.A., their attorneys of record herein, pursuant to Rule 3, J.R.P., hereby object to Claimant's Motion for Permission to Appeal from Idaho Industrial Commission's Interlocutory Orders

1083

Entered May 10, 2005 and May 12, 2005 (Claimant's Motion for Permission). Defendants also move the Industrial Commission for its order shortening the time for submission of briefs relative to Claimant's Motion for Permission.

Claimant's motion was filed May 12, 2005. According to Claimant, Claimant "will submit her supporting memorandum within fourteen (14) days of the filing date of this Motion, as provided for by Rule 7(b)(3), I.R.C.P., therein setting forth a requested relief for the concerns raised." (Claimant's Motion for Permission, p. 3.)

The Idaho Rules of Civil Procedure do not apply in these circumstances. The Idaho Industrial Commission has expressly adopted Judicial Rules of Practice and Procedure that govern motion practice before the Idaho Industrial Commission. Rule 1, J.R.P. The Idaho Industrial Commission's Judicial Rule of Practice and Procedure, Rule 3(E)(2) provides as follows:

2. If after 14 days from the filing of a motion, no brief, affidavit, or other response is filed, the Commission may act on the motion. The Commission may act on the motion sooner after giving actual notice, or attempting to give actual notice by telephone or by facsimile transmission to all parties. If the motion is opposed by any party, the Commission may base its ruling on written argument or may conduct such conference or hearing as may be necessary, in the Commission's judgment, to rule on the motion.

Here, Claimant has erroneously relied upon the Idaho Rules of Civil Procedure to allow himself fourteen days by which to submit a memorandum in support of Claimant's motion.

Nevertheless, this is the same period of time allowed for Defendants to respond to a motion, pursuant to J.R.P. 3(E)(2), quoted above. Defendants respectfully object to this mode of proceeding, on the following grounds.

First, Claimant submits no authority as to why the Idaho Rules of Civil Procedure should apply in this context, rather than the Industrial Commission's Judicial Rules of Practice and Procedure. It is well established that the Idaho Rules of Civil Procedure have no application to the Industrial Commission, except and insofar as the Industrial Commission has expressly adopted such rules. There is no legal authority of which Defendants are aware that the Industrial Commission has adopted Idaho Rule of Civil Procedure 7(b)(3). To the contrary, motion practice before the Industrial Commission is governed by Rule 3, J.R.P.

Second, if the Industrial Commission were to permit Claimant fourteen days by which to submit a memorandum in support of Claimant's Motion for Permission, as Claimant proposes, that brief would be received on the same date that Defendant's response is due pursuant to Rule 3, J.R.P., quoted above. Thus, the Industrial Commission would be deprived of the benefit of a "clash" between the briefs submitted by the opposing parties. Defendants submit that it would be appropriate for the parties to submit briefs at different times so that both parties address the same issues, and not leave it to chance whether that will occur. Further, Defendants do not know the basis or grounds upon which Claimant's Motion for Permission is based. Accordingly, Defendants have no way of ascertaining what arguments would be responsive to any arguments Claimant may advance in support of her Motion for Permission.

Third, pursuant to Rule 3, J.R.P., Defendants run the risk that if Claimant takes fourteen days to submit a memorandum in support of her motion for permission, Defendants will not be permitted time to prepare their response, since their response is due fourteen days from the date the motion is filed, namely May 26, 2005. That happens to be exactly the same date that the

Claimant's memorandum would be filed according to Claimant's proposed procedure. That also happens to be the same date the referee has scheduled a telephone conference in this matter. It is, in addition, the date Defendants have scheduled an evaluation for Claimant with Dr. Richard Wilson, pursuant to the Referee's Order of May 12, 2005, requiring Claimant to attend an evaluation by Dr. Wilson.

For the foregoing reasons, Defendants respectfully object to Claimant's Motion for Permission on these limited procedural grounds, namely, that the Claimant's Motion for Permission does not comport or comply with Rule 3, J.R.P. Defendants reserve the right to object to Claimant's Motion for Permission on additional grounds.

Further, based on the foregoing, Defendants respectfully move the Industrial Commission for its Order shortening the time for submitting briefing with respect to Claimant's Motion for Permission. Defendants propose that Claimant have until the close of business on Monday, May 23, 2005, by which to submit her memorandum in support of the Motion for Permission, and that Defendants thereafter be required to submit their brief by the close of business on Wednesday, May 25, 2005. That would give the referee the written authorities upon which both parties rely in supporting or opposing Claimant's Motion for Permission prior to the time of the telephone conference scheduled for May 26, 2005.

Alternatively, if the Industrial Commission is inclined to allow Claimant fourteen days from the date of filing her Motion for Permission by which to submit a memorandum in support therein, Defendants respectfully request that they be afforded an additional fourteen days from

the date Claimant files her memorandum in support by which to submit their memorandum in opposition to Claimant's Motion for Permission.

Respectfully submitted this 19th day of May, 2005.

ELAM & BURKE, P.A.

By: 

Jon M. Bauman, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 19th day of May, 2005, I caused a true and correct copy of the above and foregoing instrument to be sent by the method indicated below to:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail (postage prepaid)
☐ Hand Delivery
☐ Federal Express
☒ Facsimile Transmission
Fax: 345-1129
Phone: 345-1125


Jon M. Bauman

Ryan P. Armbruster
Jon M. Bauman
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Armbruster - ISB #1878
Bauman - ISB #2989

Attorneys for Defendants

2005 MAY 25 A 11:17
RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF
THE STATE OF IDAHO

STACY A. GIBSON,)	
)	
Claimant,	)	I.C. No. 01-015332
)	
v.	)	RESPONSE TO CLAIMANT'S MOTION
	)	FOR PERMISSION TO APPEAL FROM
ADA COUNTY SHERIFF'S OFFICE,	)	IDAHO INDUSTRIAL COMMISSION'S
	)	INTERLOCUTORY ORDERS
Employer,	)	ENTERED MAY 10, 2005 AND MAY
	)	12, 2005
and)	
)	
STATE INSURANCE FUND,)	
)	
Surety,)	
Defendants.)	
)	

Defendants in the above-noted matter, by and through the law firm of Elam & Burke,
P.A., their attorneys of record herein, in an abundance of caution and pursuant to Rule 3, J.R.P,
hereby submit their response to Claimant's Motion for Permission to Appeal from Idaho

Industrial Commission's Interlocutory Orders Entered May 10, 2005 and May 12, 2005

(Claimant's Motion for Permission). By this motion, Claimant seeks to appeal from the two interlocutory orders of the referee mentioned above, which require her to attend a medical evaluation by a neurologist retained by Defendants.

DISCUSSION

A. **Governing Idaho Law Precludes Appeals to the Idaho Supreme Court From Interlocutory Orders of a Referee.**

The rule is well-established in Idaho that the interlocutory order of a referee at the Industrial Commission is not appealable to the Idaho Supreme Court unless the specific order is expressly confirmed or approved by the Industrial Commission itself. This rule is and has been clear for years, and is so obviously necessary to the proper functioning of both the Supreme Court and the Commission, that Claimant's motion should be regarded as frivolous. There would be no end of appeals and no finality in worker's compensation cases if every interlocutory order of the Industrial Commission's referees could be appealed to the Idaho Supreme Court. That court would be inundated by Rule 12 motions in short order. Appeals from the Industrial Commission are governed by Idaho Code Section 72-724, which provides in its entirety as follows:

An appeal may be made to the Supreme Court by such parties from such decisions and orders of the commission and within such times and in such manner as prescribed by Rule of the Supreme Court. (Emphasis added.)

1089

Claimant's motion fails because under Idaho Code Section 72-724, the interlocutory order of a referee is not an "order of the Commission" unless it has been approved or confirmed by the Commission pursuant to Idaho Code Section 72-506.¹ Idaho Code Section 72-506(2) provides,

Every finding, order, decision or award made by any member, hearing officer, referee, or examiner pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission, and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the commission. (Emphasis added.)

Thus, under Idaho Code Section 72-724, only orders "of the commission" itself may be appealed, and not orders of referees that have not been approved or confirmed by the Industrial Commission. The Idaho Supreme Court has so held in *Peterson v. Farmore Pump & Irrigation*, 119 Idaho 969, 971, 812 P.2d 276, 278 (1991). To the same effect is the decision in *Ball v. Daw Forest Products Company*, 136 Idaho 155, 3 P.3d 933 (2001). In *Simpson v. Louisiana-Pacific Corp.*, 134 Idaho 209, 998 P.2d 1122 (2000), the Idaho Supreme Court interpreted Idaho Appellate Rule 11(d) to preclude an appeal as a matter of right from the interlocutory order of an Industrial Commission's referee. The Supreme Court declared:

Idaho Appellate Rule 11(d) provides for appeal "[f]rom any final decision or order of the Industrial Commission." Thus, a referee's interlocutory orders are not final orders of the Commission and are not appealable under I.A.R. 11(d). *Dehlbom v. State*, 129 Idaho 579, 930 P.2d 1021 (1997); *Peterson v. Farmore Pump & Irr.*, 119 Idaho 969, 812 P.2d 276 (1991).

Id., 134 Idaho at 211, 998 P.2d at 1124.

¹The Industrial Commission, plainly, has the authority not only to approve and confirm, but also to disapprove and disaffirm interlocutory orders of referees.

1090

In *Dehlbom v. State of Idaho Industrial Special Indemnity Fund*, 129 Idaho 579, 930 P.2d 1021 (1997), the Idaho Supreme Court again addressed an interlocutory decision of a referee ruling on the admissibility of testimony from a vocational expert. The Industrial Commission's findings of fact, conclusions of law and proposed order contained no reference to the referee's decision regarding her testimony, nor did the record indicate that the claimant sought, at any time, to bring that ruling to the Commission's attention, either by filing a motion to reconsider or by arguing the issue in a post-hearing briefing. Accordingly, the Commission did not specifically approve or adopt the referee's ruling and therefore, the supreme court held, that ruling was not a final appealable order under Idaho Appellate Rule 11(d):

We have held that interlocutory orders of a Commission referee that are not approved or adopted by the full Commission do not fall within the definition of a "final decision or order" of the Commission.

Dehlbom v. State of Idaho, Industrial Special Indemnity Fund, 129 Idaho at 581, 930 P.2d at 1023. The supreme court therefore declined to address the referee's interlocutory ruling. *Id.*, 129 Idaho at 582, 930 P.2d at 1024.

The Idaho Supreme Court also interpreted Idaho Code Section 72-724 and Idaho Appellate Rule 11(d) in the same way in *Peterson*, above, to hold that a referee's order denying the Claimant's motion to compel discovery was not a final decision of the Commission. The record before the court did not disclose that the Commission was ever asked to consider the motion or the referee's ruling on it, as contemplated by Idaho Code Section 72-506(2). The denial of the motion was not referred to in the referee's findings of fact, conclusions of law, and

order that was approved, confirmed and adopted by the Commission. Therefore, there was no right to appeal from the referee's order.

Thus, even in a case where the referee has presented a decision to the Industrial Commission for its approval and the Commission has approved the referee's proposed decision, unless the specific ruling of the referee was expressly approved by the Industrial Commission, that ruling cannot be appealed to the Idaho Supreme Court as a matter of right.

Significantly for purposes of this case, the court in *Peterson* also pointed out that under Idaho Appellate Rule 17(e)(1)(A), "[a]ll interlocutory judgments, orders and decrees entered prior to the judgment, order or decree appealed from," could be "construed to allow us to consider the *referee's order* denying the motion to compel discovery. To do so, however, would expand the statutory right of appeal specified by the legislature in I.C. Section 72-724 to include orders that were not *orders of the Commission*. This is beyond our authority to do." 119 Idaho 971, 812 P.2d, 278 (emphasis added).

The foregoing analysis plainly extends not only to appeals sought under Idaho Appellate Rule 11, but also to interlocutory appeals sought pursuant to Idaho Appellate Rule 12. The Idaho Supreme Court has held that Idaho Code Section 72-724 and Idaho Code Section 72-506 govern what are "decisions or orders of the commission" from which an appeal can be taken within such times and in such manner as prescribed by Rule of the Supreme Court." *Peterson, Simpson, Ball, Dehlbom*, above. The statutes must be satisfied or there is no occasion to reach the issue of whether any of the Idaho Appellate Rules may be implicated. These cases demonstrate that only decisions and orders "of the Commission" may be appealed. A referee's interlocutory decision

or order is not a decision or order “of the Commission” unless it has been approved or confirmed by the Commission. Idaho Code Section 72-506. Thus, until and unless the Industrial Commission has explicitly approved and adopted the referee’s specific order—and not merely a proposed decision made by the referee in a case where the particular order was never presented for the Commission’s specific approval or confirmation—there can be no right of appeal to the Idaho Supreme Court. Because the interlocutory order of the referee here was not approved or confirmed by the Industrial Commission, it is not appealable. Idaho Code Section 72-724. Therefore, neither the Industrial Commission nor the Idaho Supreme Court need reach the question whether the order could properly be appealed pursuant to Idaho Appellate Rule 12, Idaho Appellate Rule 11, or any other provision of the Idaho Appellate Rules. A decision or order must be “of the Commission” before it can be appealed under *any* rule promulgated by the Idaho Supreme Court. *Id.*

B. Even if the Governing Statutes Did Not Apply, Idaho Appellate Rule 12 Does Not Permit an Appeal of the Referee’s Interlocutory Orders.

1. Rule 12 I.A.R. Does Not Permit an Appeal From the Referee’s Unconfirmed Order.

Even if the governing statutes did not exist and the Industrial Commission could rely solely on the text of Idaho Appellate Rule 12 in this case, that rule provides only that the Supreme Court may grant permission to appeal “from an interlocutory order of an administrative agency. . . .” This language plainly refers to orders of the agency itself, and not to orders of referees, hearing officers, administrative law judges, special masters, or the like. In fact, there is no reason the Idaho Supreme Court would construe the phrase interlocutory order “of an

administrative agency," where that agency is the Industrial Commission, any differently from the way it has construed the phrase "of the Commission" under Idaho Code Sections 72-724 and 72-506. If an order is not "an order of the Commission," it is plainly not an order of the "administrative agency" known as the Industrial Commission. Therefore, even if Claimant could surmount the barriers imposed by Idaho Code Sections 72-724 and 72-506, and invoke Idaho Appellate Rule 12 directly, it would avail Claimant nothing.

2. **Claimant Has Not Identified Any Controlling Questions of Law That Meet the Criteria the Supreme Court Has Established.**

Claimant identifies four issues which she denominates controlling questions of law. None of the four issues is a controlling question of law. All of the issues are factitious and are plainly intended to obstruct Defendants' right to have Claimant examined by a neurologist, notwithstanding the fact that Claimant herself, at the eleventh hour, disclosed that she had undergone an electroencephalogram. Claimant's four issues all assume facts not in evidence, namely, that Claimant has already been "victimized," that she will be "revictimized" if she is examined by Defendants' expert, neurologist Richard Wilson, M.D., and that Defendants' right to have Claimant examined by Dr. Wilson must be circumscribed and restricted by Dr. LaMarr Heyrend, Claimant's forensic expert and treating psychiatrist. Claimant thereby seeks to exert a complete and absolute veto over Defendants' right to have Claimant evaluated pursuant to the rules of discovery and Idaho Code Section 72-433. Claimant has already used this tactic to prevent evaluation by Defendants' expert before the hearing that was scheduled to begin on May

26. Claimant's refusal to attend the evaluation so prejudiced Defendants that they had no alternative but to seek to vacate the hearing, further delaying these proceedings.²

The referee has already ordered that Claimant should undergo the evaluation with Dr. Richard Wilson—not once, but in effect, three times—by ordering Claimant to attend the first scheduled evaluation with Dr. Wilson on May 11, 2005, by holding that Claimant's Motion to Reconsider that order was procedurally improper, and by entering a subsequent order on May 12, 2005, requiring Claimant to attend a new evaluation by Dr. Wilson. Significantly, nothing in any of the referee's rulings precludes Claimant from bringing her physician to the evaluation. Nevertheless, it is apparent from her pleadings of record herein that Claimant seeks to use Dr. Heyrend's purported unavailability as a means of controlling when an evaluation can be conducted by Dr. Wilson. This is improper and unfair. Defendants' right to have Claimant examined by a competent, qualified neurologist cannot be subject to Claimant's ability to orchestrate exactly when and under what circumstances the evaluation may be conducted. Claimant had already prepared this case for hearing once, and had not seen any need for undergoing an electroencephalogram in order to prove her case. Less than two months before the

²It is important to note that evaluation of Claimant is required for several reasons. Dr. Heyrend declared that Claimant has suffered from fugue states. As Dr. Wilson attested in his affidavit of May 11, 2005, "fugue states may be evidence of a neurological problem, namely, that Mrs. Gibson may have complex partial epilepsy. In that case, she should definitely be evaluated by a competent neurologist and a repeat encephalogram should be performed." Dr. Wilson also attested that since Dr. Heyrend claims he "obtained an abnormal electroencephalogram of Mrs. Gibson," an "expert in neurophysiology should examine her in order to substantiate or otherwise evaluate Dr. Heyrend's assessment." Dr. Wilson believes Claimant should have a second electroencephalogram to be compared with the one performed by Dr. Heyrend "in order to diagnose any neurological conditions from which Claimant may be suffering."

latest hearing date, Claimant underwent an electroencephalogram, thus drastically altering her approach to this case, and of necessity, Defendants' approach as well. Defendants therefore sought to obtain the electroencephalogram, which, despite Claimant's counsel's protestations, has never been produced. Defendants subpoenaed the electroencephalogram, but Dr. Heyrend asserted he did not get the subpoena and the electroencephalogram has never been produced. (Depo of Dr. Heyrend, p. 43, L. 3 - p. 44, L. 22.) Instead, Defendants have been spoon-fed pages of colored diagrams which only represent Dr. Heyrend's personal interpretation of the electroencephalogram.

Claimant obstructed Defendants in the opportunity to have her examined by Dr. Wilson on May 10, 2005. Despite an Industrial Commission referee's order that she attend the evaluation, Claimant refused, hiding behind a procedurally invalid motion to reconsider the referee's interlocutory order. That motion was duly denied. None of the four issues raised by Claimant's Motion for Permission is a question of law which should be clarified by Idaho's highest court in order to "materially advance the orderly progress" of this litigation.

3. **The Standard for Review of Interlocutory Appeals Under I.A.R. 12(a).**

The Idaho Supreme Court has addressed on numerous occasions the standard to be applied in evaluating motions for permissive appeal under Idaho Appellate Rule 12(a). Rule 12(a) itself provides that appeals may only be taken concerning a

controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

The Idaho Supreme Court has further clarified the standard for granting an interlocutory appeal. In *Budell v. Todd*, 105 Idaho 2, 665 P.2d 701 (1983), it observed that an appeal would be appropriate where substantial legal issues of great public interest or legal questions of first impression are involved. *Id.*, 105 Idaho at 4, 665 P.2d at 703. It articulated four factors by which this question should be analyzed: first, the impact of an immediate appeal on the parties; second, the effect of a delay in the lower tribunal pending resolution of the appeal; third, the likelihood or possibility of a second appeal after judgment is finally entered by the tribunal; and finally, the case workload of the appellate court or courts. *Id.*

In this case, it is apparent that the appeal to the Idaho Supreme Court is not intended to advance the orderly resolution of the litigation, but to delay it. There is no substantial dispute that a claimant can be required to attend a medical evaluation on reasonable notice. Such notice has been provided. Claimant was ordered to attend. It is palpably unreasonable of Claimant to maintain that she, by her expert witness, should be able to dictate the time and circumstances under which she can be evaluated by an opposing party's expert. Claimant's failure to obey the referee's order of May 10, 2005, has already delayed this litigation and forced the hearing to be vacated. Nothing in the referee's orders, or either of them, precluded Claimant from bringing her own treator to the independent medical evaluation. The question whether Claimant suffered a psychological injury is the ultimate question to be determined in this litigation. Claimant's motion asks the Industrial Commission to assume the truth of that allegation even though the hearing has never been held. Further, while relying on that unproven proposition, Claimant seeks

1097

to prevent Defendants from examining Claimant under any circumstances except those that are agreeable to Claimant, her counsel and her hand-picked psychiatrist.³

Here, the impact of an immediate appeal on the parties would be negligible as far as resolving an important legal question, since it would almost certainly remain the law even after an appeal that Claimant would have to undergo an evaluation, would be entitled to take her treater with her, but should not be allowed to obstruct or delay the evaluation according to the whim of her treating doctor. The effect of the appeal on the case, however, would be to delay matters substantially, and to no apparent purpose.

The effect of the delay on the lower tribunal would presumably be negligible since the *matter could not be tried while the appeal is pending*. Defendants maintain that they are entitled to have Claimant evaluated by a competent neurologist, and to have him review the electroencephalogram before a hearing is held.

The likelihood or possibility of a second appeal after the Commission has entered its final order in this case is quite substantial, given that Claimant has appealed to the supreme court, at least once, in all the other civil cases arising from this same nexus of events, and given Claimant's insistence that even an interlocutory order of the referee, which has never been

³It should be understood that Dr. Heyrend is a personal friend of Claimant's counsel, an old family friend of the father of Claimant's counsel, and that Claimant herself was referred to Dr. Heyrend because her husband works for Claimant's counsel. (Depo of F. LaMarr Heyrend, p. 9, Ll. 3-22.) Curiously, Dr. Heyrend is always available when Claimant's counsel requires an affidavit that any effort to have Claimant examined by a defense expert, would "revictimize" and "retraumatize" her. At the same time, he is never available when Defendants seek to have Claimant evaluated, and his report, which would have to have been produced by May 16, 2005, had the hearing not been vacated, has still not been produced to Defendants, even though Claimant underwent the electroencephalogram on March 31, 2005.

1098

confirmed or approved by the Industrial Commission, should be subject to an appeal. Thus, this factor plainly militates against allowance of an appeal under these circumstances.

Finally, the case workload of the appellate court would be increased to an alarming degree if parties before the Industrial Commission were permitted to appeal pursuant to Rule 12(a), I.A.R., from any interlocutory order of a referee. The mere processing of the motions for permissive appeal would be extremely burdensome both to the Commission and the Idaho Supreme Court, even if all the motions for permissive appeal were denied. If some of the appeals were granted, the Idaho Supreme Court would ultimately find itself inundated by motions for permissive appeals. The Court has wisely taken the approach that only orders of the Commission itself are subject to appeal, meaning that interlocutory orders of a referee may not be appealed unless they have been expressly and specifically confirmed or approved by the Industrial Commission itself.

Based on the foregoing criteria, it is plain that the proposed appeal here does not satisfy the requirement that a substantial legal issue of great public interest or legal question of first impression is raised here, determination of which would "materially advance the orderly resolution of the litigation."

4. Prior Decisions Authorizing Interlocutory Appeals From the Commission are Distinguishable.

It is instructive to consider the cases where the Idaho Supreme Court has allowed an interlocutory appeal from a decision of the Industrial Commission. In none of those cases has the interlocutory order of a referee been the subject of an appeal under Idaho Appellate Rule 12, as far as can be ascertained from the reported decisions. Moreover, all involve obviously crucial

questions of law, central to the litigation, which required clarification by the Supreme Court. All those cases are decidedly different from the situation here.

In *Dohl v. PSF Industries, Inc.*, 127 Idaho 232, 899 P.2d 445 (1995), the supreme court permitted the surety to appeal under Rule 12, I.A.R., where the Industrial Commission had expressly adopted the referee's findings of fact, conclusions of law and proposed order. The Industrial Commission, moreover, had issued an order on reconsideration and reaffirmed the referee's original decision on that particular issue. The Commission retained jurisdiction on future medicals, thus preventing its order from being a final order which could have been appealed under Idaho Appellate Rule 11(d). The Idaho Supreme Court found the interlocutory appeal was proper because the question of law raised by the appeal was of first impression, and fit the *Budell* factors set forth above. Thus, the appeal in *Dohl* satisfied the rules established by Idaho Code Sections 72-724 and 72-506, as well as those set forth in Idaho Appellate Rule 12(a) and the cases interpreting it. In short, the *Dohl* case is entirely distinguishable from the case presented here.

In *Peckham v. Producer's Lumber Company*, 169 Idaho 675, 778 P.2d 797 (1989), four of the five sureties joined in the interlocutory appeal under Idaho Code Section 72-439, in order to clarify which of the sureties should ultimately be held liable under the "last injurious exposure rule" to pay the worker's compensation benefits. Motions to dismiss were filed at the Industrial Commission level and after they were resolved, the Commission was asked to reconsider its decision. The Industrial Commission never ruled on the motion for reconsideration and the

1100

supreme court consolidated all appeals. The question was plainly the application of the “last injurious exposure” rule under Idaho Code Section 72-439.

Obviously, in *Peckham*, the criteria imposed by Idaho Code Sections 72-724 and 72-506 had been met and the criteria of Idaho Appellate Rule 12(a) were also satisfied, since determination of which surety was liable would materially advance the orderly resolution of the litigation before the Industrial Commission and obviate the need for subsequent appeals. Further, the question was not likely to engender an inordinate number of future appeals, as would be the case here if the appeal were permitted.

In *Boyd v. Potlatch Corporation*, 117 Idaho 960, 793 P.2d 192 (1990), the Idaho Supreme Court was asked to determine what the term “manifestation” means for purposes of determining whether a Claimant has complied with the notice and statute of limitations requirements in an occupational disease case. Again, this was clearly a controlling question of law that would materially advance the orderly resolution of the litigation at the Industrial Commission level. The only indication in the decision that the employer took an interlocutory appeal is set forth in the brief paragraph found just below the name of the case. There is no discussion or analysis of Idaho Appellate Rule 12. It is apparent from review of the case, however, that the appeal was not taken from an interlocutory order of a referee which had not been approved or confirmed by the Industrial Commission.

Burdick v. Thornton, 109 Idaho 869, 712 P.2d 569 (1985) involved the question of whether the claimant was an employee of an employer, rather than an independent contractor. In that instance, the Industrial Commission itself certified the appeal as a controlling question of

1101

law and noted that a resolution of that question could preclude the necessity of further proceedings before the Commission. Again, it is apparent that what was at issue in *Burdick* was a controlling question of law which was even certified by the full Commission, as opposed to a disagreement over the interlocutory order of an Industrial Commission referee.

Finally, in *Kindred v. Amalgamated Sugar Company*, 118 Idaho 147, 795 P.2d 309 (1990), the Idaho Supreme Court expressly relied on *Budell* above and treated the appeal as if it were a Rule 12 interlocutory appeal, because it had already been briefed and argued as if it were a Rule 11(d) appeal. The Idaho Supreme Court determined that the order of the Industrial Commission was not final and therefore the case could not be appealed pursuant to Rule 11(d), I.A.R. As a courtesy to the parties, and to resolve the question of law presented, the supreme court therefore simply decided to treat the case as arising under Rule 12, I.A.R.

All of the foregoing cases are distinguishable from the case presented here. All involved central questions of law which needed to be clarified in order to let the litigation proceed in an orderly fashion. No such question is presented here.

CONCLUSION

Claimant has failed to meet the standards the Idaho Supreme Court has created for determining when an interlocutory appeal is proper. The appeal here does not involve a question of law central to or “controlling” in this litigation. Its resolution would not materially advance the orderly resolution of the litigation, but only delay it. The likelihood of a second appeal in this case is a foregone conclusion. Interpreting Idaho Appellate Rule 12(a) to permit the appeal of any interlocutory order of an Industrial Commission Referee—particularly where the order has

1102

never been approved or confirmed by the full Commission—would inundate both the Industrial Commission and the Idaho Supreme Court as scores of hopeful litigants would seek to portray every adverse interlocutory order as presenting a “controlling question of law.” Neither the Commission, nor the supreme court, has the resources to cope with the avalanche of permissive appeals that would be likely to ensue.

Claimant’s Motion for Permission is frivolous and unreasonable. The Idaho Supreme Court has refused since 1991 to interpret in Idaho Code Section 72-724 as allowing appeals from interlocutory orders of an Industrial Commission referee that have never been approved or confirmed by the Commission itself. Claimant’s motion should be denied.

Respectfully submitted this 25 day of May, 2005.

ELAM & BURKE, P.A.

By: 

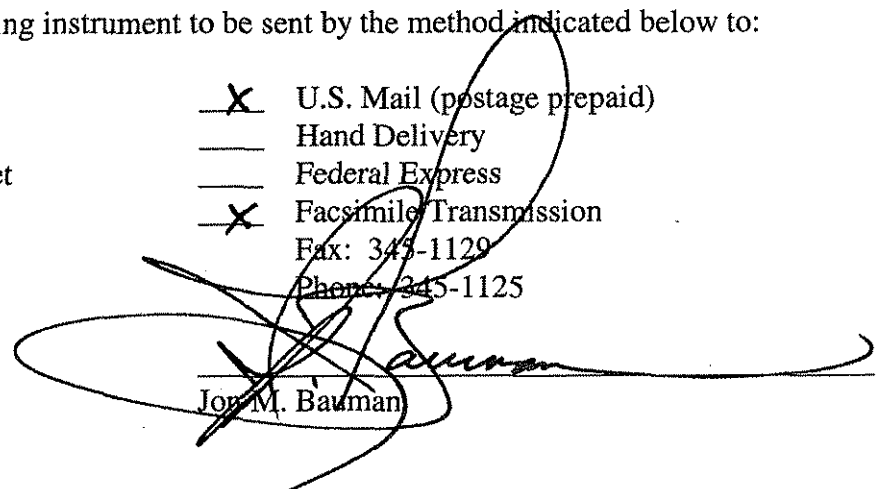
Jon M. Bauman, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of May, 2005, I caused a true and correct copy of the above and foregoing instrument to be sent by the method indicated below to:

Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, Idaho 83702

☒ U.S. Mail (postage prepaid)
☐ Hand Delivery
☐ Federal Express
☒ Facsimile Transmission
Fax: 345-1129
Phone: 345-1125


Jon M. Bauman

ELAM & BURKE*A Professional Association*
ATTORNEYS AT LAW281 EAST FRONT STREET, SUITE 300
POST OFFICE BOX 1539
BOISE, IDAHO 83701**TELEPHONE**
208-343-5454**FACSIMILE**
208-384-5844**E-MAIL**
jmb@elamburke.com

JON M. BAUMAN

FACSIMILE TRANSMISSION**May 26, 2005**

Please deliver the following pages to:

NAME: Referee Douglas A. Donohue / Dena Burke
COMPANY: Industrial Commission
ADDRESS: Boise, Idaho
TEL. #: 334-6035
FAX #: 332-7558

NAME: Vernon K. Smith
COMPANY: Attorney at Law
ADDRESS: Boise, Idaho
TEL. #: 345-1125
FAX #: 345-1129

FROM: Jon Bauman
FILE #: 179-9303 / Gibson v. Ada County

FILED
MAY 26 2005
INDUSTRIAL COMMISSION**TOTAL NUMBER OF PAGES (including this page):** 5**FAXED MATERIAL DESCRIPTION OR COMMENTS:** May 26, 2005 correspondence**CONFIDENTIALITY NOTICE**

The information in this facsimile is confidential and intended only for the use of the addressee. The data transmitted is attorney privileged and may be exempt from disclosure. Do not copy or distribute to anyone other than the addressee. Reliance on this data by other than the intended recipient is prohibited. Please notify us immediately if you have received this communication in error. Upon notification we will arrange for return of the fax copies to Elam & Burke. Thank you for your assistance.

Original documents will:

[]	Sent by U.S. Mail
[]	Follow by Federal Express
[XXX]	Not be sent

If you have any problems receiving, please call Sandi at (208) 343-5454.

1104

ELAM & BURKE*A Professional Association*
ATTORNEYS AT LAW251 EAST FRONT STREET, SUITE 300
POST OFFICE BOX 1538
BOISE, IDAHO 83701TELEPHONE
208-348-5454FACSIMILE
208-354-5844E-MAIL
jmb@elamburke.com

JON M. BAUMAN

May 26, 2005

VIA FACSIMILE

332-7558

Referee Douglas A. Donohue
Industrial Commission
317 West Main Street
Boise, Idaho 83702

Attn: Dena Burke

Re: *Stacy A. Gibson v. Ada County and State Insurance Fund*
I.C. No. 01-015332

Dear Ms. Burke:

On May 25, 2005, Defendants filed their Response to Claimant's Motion for Permission to Appeal From Idaho Industrial Commission's Interlocutory Orders Entered May 10, 2005 and May 12, 2005. In that Response we referred to Dr. Heyrend's testimony at his deposition. It has come to my attention that since we have not received the original deposition transcript of Dr. Heyrend from the court reporter, Dr. Heyrend's deposition transcript has not yet been lodged with the Industrial Commission. I am enclosing with this letter a copy pages 9, 43 and 44 of Dr. Heyrend's deposition, as referred to in the Response.

Very truly yours,

ELAM & BURKE
A Professional Association
Jon M. Bauman

JMB:sd

Enclosures

cc: Vernon K. Smith (w/ enc. - via facsimile)
Jewel Owen (w/ enc. - via U.S. mail)

INDUSTRIAL COMMISSION

MAY 26 2005

FILED

1105

**In the District Court of the Fourth Judicial District of the State of Idaho
in and for the County of Ada**

STACY A. GIBSON,

Claimant,

vs.

ADA COUNTY SHERIFF'S OFFICE,

Employer,

And related matters.

Case No. 01-15332

DEPOSITION OF F. LAMARR HEYREND, M.D.

May 5, 2005

VOLUME 1

Pages 1 - 80

Reported by

Vanessa M. Starr

No. T-247

P.O. Box 1625
605 West Fort Street
Boise, ID 83701

Voice 208 345 3704
Fax 208 345 3713
Toll free 800 424 2354
Web www.etucker.net
E-mail info@etucker.net

TUCKER
and ASSOCIATES, LLC
Court Reporters

When excellence is an obligation

COPY

1106

Gibson v. Ada County Sheriff's Office

5/5/2005

Lamarr F. Heyrend

Page 9

1 question, since we are making that as an exhibit
 2 anyway, Doctor. I will spare you the trouble.
 3 Okay. Who referred Mrs. Gibson to you?
 4 A. I think she came here through her
 5 husband and he brought her here. And, as you
 6 know, he spends a lot of time with Attorney Smith,
 7 and I think that is how they managed to come to
 8 see me.
 9 Q. You're acquainted with her attorney,
 10 Vernon K. Smith?
 11 A. Oh, yes.
 12 Q. And how long have you been acquainted
 13 with Mr. Smith?
 14 A. Goes back to the beginning when I was
 15 very good friends with his father who was an
 16 attorney, and then the father departed to heaven
 17 and then his son came along. And so I knew him
 18 when he was still in school, and as soon as he got
 19 open for a practice.
 20 Q. I take it the son came along somewhat
 21 before the father departed into heaven?
 22 A. Yes.
 23 Q. All right. What was the purpose of the
 24 referral, Dr. Heyrend?
 25 A. Well, basically at the time we had an

Page 10

1 extremely upset young woman, I say young woman
 2 because of my age, and she obviously was anxious.
 3 She obviously, when she spoke, was speaking in
 4 spurts rather rapidly, and she was describing her
 5 internal distress, her tension, her jitteriness.
 6 And that as I observed her I recognized that she
 7 was suffering from generalized anxiety reaction
 8 plus she was talking about the horrible things
 9 which had happened to her and so forth. And
 10 that's when I came to the conclusion that what she
 11 has was post-traumatic stress disorder.
 12 Q. All right, Doctor, I think I asked for
 13 purpose of the referral and you have described her
 14 manner and the way that she presented to you. Was
 15 there a particular purpose when Mrs. Gibson was
 16 referred to you?
 17 A. Well, I felt it was to find out what
 18 was wrong with her.
 19 Q. All right.
 20 A. I think that was the general purpose
 21 because she was a very, very miserable person.
 22 Q. And you have been her treating doctor
 23 in the period since October 16, 2002?
 24 A. That is correct.
 25 Q. Until this moment; is that true?

Page 11

1 A. Well, that's true. I think she has an
 2 appointment with me.
 3 Q. All right. And aren't you also serving
 4 as a forensic expert in her workers' compensation
 5 litigation?
 6 A. I may very well serve as forensic
 7 expert in the workmen's compensation. At this
 8 particular point I don't recall any testimony I
 9 have given them.
 10 Q. All right. You were talking about
 11 diagnosis you have made of her. What diagnosis
 12 have you made of Mrs. Gibson?
 13 A. Okay. I pointed out the -- we have to
 14 say that as you go through the spectrum that she
 15 has a dysthymic reaction due to circumstances in
 16 which she finds herself, and then you have the
 17 spectrum -- she meets the spectrum for generalized
 18 anxiety reaction because she was certainly anxious
 19 when she was here, and it appeared that she had
 20 been anxious for over 30 days, which I think is
 21 important.
 22 And then with the disk scanning and so
 23 forth, I felt that she was also suffering from
 24 post-traumatic stress disorder. And then as you
 25 looked at her clearly, clearly recognize that she

Page 12

1 was on the verge of a panic-type reaction.
 2 Q. When did you determine her diagnosis,
 3 Doctor?
 4 A. Beg your pardon?
 5 Q. When did you determine her diagnosis?
 6 A. I would say over the first visit I had
 7 these impressions, and then as time went on it
 8 solidified my impressions. And I have watched her
 9 during this period of time and she has followed a
 10 predictable course.
 11 Q. How long did you spend with Mrs. Gibson
 12 on your first visit with her?
 13 A. I think it was probably well over an
 14 hour that time.
 15 Q. Did you have any contact with other
 16 health care providers who have treated Mrs. Gibson
 17 or examined her when you arrived at her diagnosis?
 18 A. No, other than her family practitioner.
 19 Q. And who is that?
 20 A. I can't recall his name. I can see
 21 him. Spensor, I think.
 22 Q. Okay. So is it fair to say that you
 23 arrived at these three diagnoses on your first
 24 visit with Mrs. Gibson in October of 2002, and
 25 then subsequent events solidified those

3 (Pages 9 to 12)

1107

Gibson v. Ada County Sheriff's Office

5/5/2005

Lammarr F. Heyrend

Page 41

1 there are a number of pages in the folder, I
2 through 13 it appears, and one page called patient
3 information that is not numbered.

4 All right. Doctor, I appreciate you
5 describing those results. I realize that takes a
6 long time, and I thank you for your cooperation in
7 that regard.

8 What I would like to know now is the
9 specific scientific authority that you rely on,
10 scientific basis, research literature, that the use
11 of an EEG to diagnose psychiatric disorders, and I
12 don't mean like sleep disorders and that type of
13 thing. I mean psychiatric disorders. I would like
14 to know what specific authority you rely on, and I
15 don't mean just names of journals, I would like
16 the specific journals, dates, pages, months,
17 years, volume numbers, organization, that sort of
18 thing?

19 A. I would have to pull those off of the
20 internet, because I do not have those readily
21 available to me. What I did bring, which I
22 thought may be helpful, is that portion Military
23 Veterans PTSD Reference Manual, in which on
24 section three they talk about brain waves, brain
25 wave altering.

Page 42

1 And that may be of help to you from the
2 standpoint that in terms of people with PTSD in
3 the military that it is a useful tool, and also
4 that if you use biofeedback they have done a great
5 deal of work in terms of changing frequencies so
6 people become less anxious.

7 But what it lists here, the situations
8 in which you have people who are suffering from
9 depression, anxiety, violent explosive disorders,
10 panic attacks, low energy, sleeping problems at
11 night, and by using the EEG you have been able to
12 make some differences in terms of biofeedback.
13 You can't do biofeedback appropriately unless you
14 do your EEG and determine some of the things which
15 we determined with this young lady.

16 Q. Well, Doctor, I hate to interrupt
17 because you have responded by saying that you
18 would have to look up most of the literature on
19 the internet, but you have a printed article?

20 A. Yes, I had it printed for you.

21 Q. And this article, is that substantiated
22 by medical research? Is there a bibliography
23 attached to it with the sources they rely on?

24 A. I am sure there is in the last page,
25 and I can get that for you.

Page 43

1 Q. But it's not there?

2 A. Not here, but I can get it.

3 Q. The subpoena I have served on you asked
4 you to provide today the literature on which you
5 rely to support your opinions about your choice of
6 procedures and tests used, specific research on
7 which you rely to support the use of
8 electroencephalogram and quantitative
9 electroencephalogram in the diagnosis of
10 psychiatric disorders, and I quoted that.

11 Is there a reason that that information
12 hasn't been provided so that we can have that
13 today?

14 A. Well, yeah. The probable reason is
15 that when this was -- when this deposition was
16 scheduled I wasn't told that that was specifically
17 in your request.

18 Q. You didn't get the subpoena that you
19 were served?

20 A. No.

21 Q. Well, I have an affidavit that says
22 that you were served the subpoena?

23 A. It was accepted here in the office.

24 Q. On the 28th of April to Ron Johnson.
25 Who is Ron Johnson?

Page 44

1 A. That is the office manager. He is not
2 available, hasn't been available for weeks.

3 Q. Okay. Well, the affidavit says he was
4 served on April 29th at about 2:30 in the
5 afternoon?

6 A. Yes.

7 Q. Are you saying that Mr. Johnson wasn't
8 here on the 29th of April?

9 A. I'm not saying that at all. He
10 probably received it, but since that time I do not
11 recall seeing him.

12 Q. Okay. You knew the deposition was
13 today?

14 A. That's right. What it is is he put it
15 on my calendar and then he left.

16 Q. And you are saying he didn't provide
17 you with a copy of the subpoena?

18 A. No.

19 Q. Is it his responsibility to provide you
20 with that kind of document, Doctor?

21 A. I think it is his responsibility that
22 he should, yes.

23 Q. Are the EEG findings that you obtained
24 from Mrs. Gibson indicative of behaviors or of
25 diagnostic categories?

11 (Pages 41 to 44)